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ABSTRACT

The Community Justice Centres (CJCs) in New South Wales (Australia) are an addition to the justice system established and maintained by the state to deal with dispute and conflict in the community. The CJCs are designed to deal with disputes, such as those between members of a family or between neighbors, where there is a continuing relationship between the people in conflict. Four centers are operating to provide disputants with a range of alternatives, such as mediation, adjudication, arbitration, and a process of conciliation and mediation, to resolve their disputes. This paper explores the CJC experience in multicultural dispute resolution. The emphasis is qualitative rather than quantitative, but available statistics were examined as a preliminary analysis. Evidence from the CJC files indicates that a great deal of conflict is cross-cultural in the broadest sense because it involves the conflict of values and views, not just conflicting interests. Ethnic and racial prejudice was a factor in a small proportion of disputes, but it is worth noting that cultural differences can be present without becoming a factor in disputes involving people of non-English speaking background (NESB). Qualitative examination of the operation of the CJCs demonstrates that the mediation methods they use provide an appropriate and effective means of resolving disputes involving people of NESB. Findings also suggest that matching mediators to the cultural backgrounds of the parties involved is not likely to contribute significantly to the resolution of disputes, and that other factors may be more important. Since evidence on this point is not conclusive, it is recommended that mediators and parties be matched for cultural background. Appendixes present three study surveys. (SLD)

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■ Working Papers ■ on ■ Multiculturalism ■

Paper No.11

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FISHER/LONG

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Working Papers on Multiculturalism No.11

Cultural Differences and Conflict in the Australian Community

Linda Fisher and Jeremy Long

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1. INTRODUCTION

This study of 'Cultural Difference and Conflict' originated as a research proposal submitted to the Office of Multicultural Affairs (OMA) by the Community Justice Centres of N.S.W. (CJCs) in May 1988. The final research plan was approved for support early in January 1989.

The study is one of several social research projects, referred to as 'focused studies', commissioned by OMA in order to gather data to complement its own quantitative research and also to inform the National Agenda for a Multicultural Australia.

The methodology of the study is outlined in section 4, with an explanation of the several changes made in the original scheme as the study developed.

The CJCs acknowledge with appreciation the support provided by OMA for this study.

The study was made possible only by the active interest and support both of the staff of the CJCs and of the many mediators who took part in discussions of the issues at the beginning of the study, who collaborated in completing the questionnaire forms on mediation over a three-month period, who helped to identify the most relevant mediations during that period and who joined in discussions of the issues raised in those mediations which were examined in depth.

The authors acknowledge with appreciation the support and encouragement of the Director of CJCs, Ms Wendy Faulkes, throughout the project.

2. DISPUTE RESOLUTION IN AUSTRALIA

The Community Justice Centres in New South Wales are a relatively recent addition to the justice system established and maintained by the State to deal with dispute and conflict in the community. Now in their tenth year of operation, having been first established as a pilot project in 1980, the CJCs are designed to deal with disputes, such as those between members of a family or between neighbours, where there is a continuing relationship between the people in conflict. They deal with civil, rather than criminal matters - with issues between people, rather than with issues between people and the state arising from the State's outlawing of, for example, violence 'against the person' and against property. They are designed to deal with types of disputes which, it has long been acknowledged, do not respond particularly well to the traditional court processes, returning to court time after time - basically the same dispute, with a different symptom or triggering incident each time - clogging the court lists and contributing to 'the law's delay', frustrating magistrates and judges without producing real satisfaction for the parties, and proving costly both to the people directly involved and a drain on the funds available for the administration of justice.

Four centres now operate - at Surry Hills in the inner city, at suburban Bankstown some 20km to the south-west, at Wollongong 90km south and, most recently, at Penrith 55km away on the fast-growing outer western side of the metropolitan area, with Wollongong managing a locally based service at Campbelltown. The centres, as was expected, still predominantly deal with disputes between neighbours (some 60 per cent of the case load) but the range of matters presented to the CJCs has expanded and a growing variety of problems has proved amenable to the mediation methods practised by the CJCs. They attract a significant number of family disputes (some 18 per cent of the overall case load) - disputes between separating couples, between parents and their adolescent or adult children, or between other adult family members (for example, over deceased estates). They have been involved in some matters between people without any continuing relationship - for example, over motor vehicle accidents and over consumer complaints. They have mediated disputes between fellow workers in offices

and in voluntary service organisations, between people in shared households and communes, and between landlords and tenants. Multi-party disputes, including neighbourhood or street conflicts, where the 'sides' are not always clearly defined, and disputes involving juvenile 'gangs', have been successfully resolved. Around half of all matters presented are resolved and some 86 per cent of all disputants that actually come to mediation reach agreement.

The CJCs are one example of a growing resort to what is termed 'Alternative Dispute Resolution' in Australia, in the United States and elsewhere. The CJCs and most other similar services provide disputants with a wider range of choice when seeking to resolve their problems, adding to rather than replacing existing institutions and methods, so that one might term them 'additional' dispute resolution mechanisms rather than 'alternative' ones. But the common feature of these 'alternatives' is that they avoid an adversarial approach and seek to involve people in 'sitting down and talking' in order to find the best possible way of resolving disputes in the interests of all those involved.

The *mediation* method adopted by the CJCs can be contrasted with *adjudication*, which is the method of most of the courts of both civil and criminal jurisdiction in Australia; with *arbitration*, widely used in industrial matters; and with *conciliation*.

In *adjudication* a third party, a disinterested person or agency, may be vested with the authority to intervene in a dispute whether or not the parties want it or upon application by one of the parties, and with power to make a decision and to enforce compliance with that decision. Adjudicators are characteristically remote from the parties, more or less distant authority figures. In the States and Territories of Australia a hierarchy of courts - local, district and State or 'Supreme' courts, presided over by justices of the peace, by magistrates and by judges - has been established to adjudicate disputes between individuals and corporate bodies (as well as to adjudicate criminal matters). Federal courts exist to deal with matters covered by the laws and the Constitution of the Commonwealth as distinct from the States. Specialist tribunals adjudicate particular categories of disputes - such as small claims tribunals, industrial courts and compensation courts, consumer claims tribunals, Equal Opportunity Tribunals and Residential Tenancies Tribunals.

Some of these specialist agencies adopt different methods for investigating and settling disputes but are vested with adjudicative powers to decide the issue when these other methods fail to do so. The Anti-Discrimination Board in New South Wales, for example, may adjudicate disputes relating to discrimination on various grounds but generally only after efforts to settle the issue by conciliation have failed, and broadly similar procedures are followed by the Equal Opportunity tribunals in other States and by the Commonwealth Human Rights and Equal Opportunity Commission. Ombudsmen, appointed to deal with complaints of the citizenry against government administration, operate in an essentially adjudicative way, even though their powers are commonly limited to the investigation of the complaint and making recommendations to the relevant government department, agency or minister. Investigation may indeed be regarded as another distinct method of dispute resolution but usually it is one part of a process, sometimes preceding conciliation or mediation (as in the procedures for dealing with complaints about discrimination), sometimes preceding some kind of judicial or quasi-judicial decision or recommendation to a higher authority which may in its effect resemble an adjudicative decision. With the recent development of administrative law in this country, more avenues for people to obtain redress in disputes with government have been provided and more tribunals and courts deal with such matters.

The role of parties to disputes that find their way to adjudicative bodies like these is generally limited to the initiation of the complaint or action and to the submission of their respective cases to the adjudicator, frequently through a specialist legal adviser and advocate, rather than directly. The parties may each propose what they consider to be a fair way of resolving the dispute but they are not involved in any negotiation of the tribunal's decision. Yet commonly the parties to a matter before the courts will negotiate a settlement, often just before the scheduled hearing of the matter, or during the course of the hearing, or after it if, for example, a trial is aborted for one reason or another. In some jurisdictions most matters may be settled 'out of court' between the parties and the court most frequently endorses and lends authority to an agreement which it had no real part in making, as when the Family Court registers a 'maintenance agreement'.

In *arbitration* the parties generally have greater control of the process, at least to the extent that they must agree to the appointment of a mutually acceptable third party who will decide the issue. But often legislation may make 'arbitration' compulsory in

certain situations and once appointed the arbitrator may handle the dispute much as would a judge or magistrate. The same scope exists, however, to encourage the parties to negotiate their own settlement during the process rather than relying upon the judgment of the arbitrator. A distinguishing characteristic of arbitration is that the parties commit themselves to accepting the ruling of the arbitrator as final and not something to be appealed to other tribunals if they find it unsatisfactory.

In common parlance *conciliation* and *mediation* mean much the same thing: essentially the involvement of a neutral third party whose role is to help the parties to reach agreement. In industrial disputes a Conciliator is a Government-appointed officer who presides over negotiations between representatives of the employer and of the employees. CJCs have adopted the North American usage of the term 'conciliation' - the actions of a third party aimed at bringing the parties to a dispute together for the purpose of dispute resolution. Thus, conciliation would normally precede the mediation process, and may in fact bring about a resolution or partial resolution of the dispute. It is also referred to (especially in US literature) as 'shuttle diplomacy', normally conducted over the telephone, whereby a third party - in this instance a member of the staff of the CJCs - speaking separately to the parties and transmitting messages and offers between them, helps them to achieve agreement. Because this process does not entail face to face discussion or any airing of grievances, it is regarded as a less effective and satisfactory method of resolving complex interpersonal disputes, since it tends to deal only with the presenting problem or incident and cannot address the underlying issues. Experience has demonstrated, however, that conciliation will achieve a satisfactory result for the disputants in around 20 per cent of cases. It appears that conciliation is an appropriate method of resolving certain disputes at a stage where the dispute has gone beyond mere argument, but has not become violent. Other agencies, including, for example, those dealing with discrimination on various grounds, generally use the term conciliation to describe all contact with disputants, including face to face negotiation in the presence of a 'third party neutral'.

Both mediation and conciliation can be seen as forms of negotiation between parties in dispute, where the parties themselves retain control of their dispute, in contrast to adjudication where it is subject to the authority and decision of a third party. In mediation the third party, the mediator, helps the parties discuss the issues but has no power to decide the issues, to make judgments, to award costs.

This method, broadly defined, is being increasingly applied in Australia in a range of fields: through agencies both government and private with names like 'neighbourhood dispute centre' and 'family mediation service'; by agencies responsible for dealing with commercial disputes, with tenancy disputes and disputes about employment and promotion in, for example, the Public Service. In most of these applications mediation is voluntarily entered into, as it is in the CJCs, but it may be required of parties to a dispute - as it is, for example, in much of the legislation outlawing forms of discrimination. The voluntary aspect may be blurred in some CJC matters, as when a magistrate may refer parties to mediation as an alternative to proceeding with court action. In these circumstances the parties may feel they have no real alternative but to agree to a mediation session.

Other methods of third-party intervention in dispute resolution include *counselling* and problem-solving, which entail the provision of advice and guidance to parties, separately or together, in how they may handle their problems. These generally entail rather more substantial inputs of content, including opinion and advice, from the third party than is characteristic of mediation and conciliation. Counselling has been much used in the area of family disputes and in many instances contains elements of diagnosis and decision making by the counsellor.

The mediation service provided by the CJCs is general rather than specialist and, as indicated above, the range of different types of disputes that have been successfully handled by the CJCs has continued to expand. The special characteristics of the service are that the parties must themselves both agree to discuss the dispute with the help of the CJC mediators and that they make their own decisions about a satisfactory outcome. The mediators do not decide right or wrong or allocate blame; they do not provide legal advice; they neither propose terms of agreement nor accept or reject terms proposed by the parties. Two mediators are assigned to each mediation and a single mediator will preside only in exceptional circumstances such as when the co-mediator fails to attend and both parties are present and wish to proceed.

The CJC mediators are 'ordinary people' selected from the community for their personal characteristics rather than specialist knowledge of the law or particular academic qualifications. They are trained in mediation techniques and skills and then, as

accredited mediators, work under the supervision of and with the support of the staff of a CJC who arrange the time and place for mediation sessions, assign mediators and to whom the mediators submit detailed reports on the mediation. They must be assertive enough to maintain order, minimise anxiety and keep the parties on track towards constructive discussion, sometimes in difficult circumstances when the parties may be loud, disorganised and angry. They have to rely on their personal authority and what limited authority as derives from their having been assigned as accredited mediators to deal with the dispute. They must be non-judgmental and indeed must be able to listen attentively to two conflicting stories without feeling the need to decide which is right or true and which is false or misleading. Experience has shown that they must be sensitive to the nuances of discussion, alert to 'hidden agendas'; good, articulate communicators as well as good listeners; and infinitely patient. They need to be capable of looking critically at their own work in mediation and aware of their own strengths and weaknesses. Unlike the staff of the CJCs the mediators are not public servants and are paid a fee at hourly rates for the time actually spent conducting and reporting on mediations. They are volunteer workers who undertake training at their own expense and they need to have a reasonable amount of time available to undertake sometimes lengthy mediations. Some are full-time workers in a variety of occupations, who can undertake mediations mostly after hours and at week ends; others are part-time workers, retired people, full-time parents or self-employed people who may be able to mediate during normal working hours if this suits the parties.

Mediators for the CJCs are required to have completed successfully a 54 hour training course provided through the Department of Technical and Further Education. The course concentrates on the development of mediation skills rather than on instruction in theory. Through simulated mediations the trainees learn to apply a specific process. The course includes some communications training. Mediators are expected to continue with the development of their skills and the CJCs arrange workshops and other training sessions from time to time, often designed to further develop areas of practice and to refine the process. Mediators maintain and improve their skills by practice and those who have not mediated for more than three months are required to undertake a refresher course before returning to the 'active list'.

Each mediation can be regarded as a training session not only for the mediators who are constantly facing new problems and finding different ways of dealing with them, but for

the parties who may be learning new ways, for them, of handling their disputes and new negotiating skills. They may leave their session better able to deal constructively with future disputes, ideally not needing to call in outside help again because they can apply the methods they used in the mediation with the help and guidance of the mediators.

Besides 'curing' disputes, community mediation services of the kind provided by the CJCs can and do provide a 'preventative' service. The earlier distinction made between civil and criminal jurisdictions can be seen as somewhat artificial in that 'simple' disputes about, say, a fence or a tree, disputes plainly of a 'civil' character, can and all too often do build up with increasing anger and insult to a point where assault, malicious damage to property, even manslaughter may result. Providing an early and effective way of dealing with any dispute - with a neighbour, with a family member, with a fellow-employee - can potentially save the people concerned and the community enormous loss and suffering. Every successful mediation may avoid indefinite cost and, by demonstrating to the parties how a conciliatory approach may benefit all concerned, may prevent costly disputation in the future.

No doubt most of the myriad disputes that arise every week in every home and every neighbourhood are resolved by the 'traditional' methods of dealing with inter-personal conflict: by talking it out, by walking away from the dispute and the disputant, or by violence. The State provides courts and tribunals of various kinds as elaborated means of dispute resolution by talking rather than by violence. Community mediation can be seen as a compromise method, less elaborate, less costly and involving minimal State intervention.

3. RESEARCH ON CULTURAL DIFFERENCE AND CONFLICT RESOLUTION

The lack of research on cross-cultural mediation in multicultural societies generally and in Australia in particular was one of the reasons this examination of cultural difference in the mediation work of the New South Wales CJCs was proposed. The literature on dispute resolution had provided little guidance when the CJCs embarked upon the provision of a mediation service in a city where a quarter of the population was of non-English-speaking background (NESB). The CJCs have developed some approaches and techniques specifically in recognition of the varied cultural background of the people who form its potential clientele in the Sydney/Wollongong region. CJC mediators have over the years been able to help many people from a wide variety of cultural backgrounds to settle disputes and the files of the CJCs record the successes and failures of mediation between people speaking many different languages and coming from many different parts of the world. It seemed that at least a preliminary examination of the CJC experience in multicultural dispute resolution might be useful both in improving its own service and in providing some guidance to the developing range of similar services around the country.

Those who have written about dispute resolution in general and about mediation in particular have not ignored cultural difference. Proponents of 'alternative dispute resolution' (ADR) have commonly emphasised how many ancient and widespread cultures around the world have practised forms of dispute resolution involving third-party, non-coercive intervention as opposed to more formal legal procedures. Folberg and Taylor (1984), in what can be regarded as a standard work on mediation, begin with a brief introductory note on 'Historical and Cultural Roots' which glances at mediation in ancient China, in Japan, in 'parts of Africa' unspecified; and refers to mediation in families, in church groups and among ethnic, religious and other sub-cultures in countries with diverse populations. But this sort of claim and this kind of superficial generalising about many diverse practices in a range of very different cultural contexts

can obscure the importance of cultural difference and lead to large claims about the 'universality' of mediation as a dispute resolving method.

On the other hand those who have written about dispute resolution and about law and justice in different cultures and societies around the world - mostly anthropologists - have tended to stress the individuality and particularity of the ways the people they study deal with inter-personal conflict and dispute, relating these to the whole context of community life. Observing disputing behaviour as something 'imbedded' in the particular society, its culture and values, anthropologists may be loath to abstract techniques of resolution from the situations in which the dispute arises and from the whole social context in which they are applied.

Detailed examination of the processes of mediation - or of what has been labelled mediation - in other cultures may sometimes reveal that it differs radically from mediation as practised in, say, the USA. Referring to mediation in ancient China, for example, Folberg and Taylor cite the 'Confucian view that optimum resolution of a dispute was achieved by moral persuasion and agreement rather than sovereign coercion'. 'Moral persuasion' is not a technique that CJC mediators would own but the literature suggests that it remains a vital element in 'mediation' in modern China where State policy and the broad interests of the community and the state are emphasised as opposed to the interests of individuals.

Folberg and Taylor, having alluded briefly to the origins of mediation in other times and other places at the beginning of their manual, have nothing more to say about cultural difference until, in a penultimate chapter 'Dealing with Special Concerns', they discuss 'Ethnic and Sociocultural Perspectives'. They here assert a strong 'universalist' position:

> Mediation as a conflict resolution process is universal and comprehensible to people of many different cultural and ethnic views, but it must be provided in such a way that it is consistent with their beliefs and traditions.

They then go on to note briefly points such as 'the British and German emphasis on punctuality and measured time' contrasting this with the orientation of a range of other, rural cultures around the present rather than the future, suggesting that

mediators 'take these differences into account' by modifying relevant rules and guidelines. Diverse cultures 'have a system of honor, obligation, or respect that dictates "my word is my bond" ' and find written contracts insulting or superfluous. Mediators working with people of German, British or Norwegian extraction are advised to use 'clarity and brevity along with precision and objectivity in written communication'. Jewish families may favour 'complex feeling-oriented' explanations and solutions to problems. Many ethnic groups - French-Canadian families are mentioned - see intervention by mediators as an 'explicit expression of their personal failure' and taking problems to an outsider 'is often considered shameful by Asian family members, and shame is a dominant cultural motivator'. The authors also refer to the effect of 'the ethnic dimension' on participants' expectations of mediators:

> After suffering the indignities of coming to outsiders to be told what to do, they feel confused when the mediator then takes a neutral role and asks the participants to make decisions.

They suggest that Iranians and Norwegians 'have strong cultural traditions and almost automatic acceptance of mediation' and that 'cultures in which face-saving and not backing down are important values find mediation a great help so long as it is provided with attention to other cultural norms (not supplanting traditional authority, for example)'. Finally they include a table 'Cross-Comparison of Ethnic Perspectives for Mediators' listing a number of 'Reactions' - 'to need for outside help from professionals', 'to interpersonal conflict', 'to time and schedules', 'to mediator's credentials', 'to mediator's role, techniques' and 'to fees' - and noting which reaction mediators might expect when providing services to various ethnic groups - Mexican, Asian, British, Irish, German, Greek, Italian and so on. This is presented only as offering 'a clue' to mediators who are urged to 'pursue further information regarding typical ethnic family structures and values' before mediating family-related conflicts.

Whether such 'clues' are accurate and not misleading and whether they have any value for mediators may be open to argument. Such listing of traits and likely 'reactions' seems to take stereotyping beyond reasonable limits (if any stereotyping can be regarded as reasonable). The dangers are that mediators, expecting reactions of the kind listed, may elicit just those reactions because they do expect them or that they may offend parties who do not conform to the stereotype.

The confident assumption that the 'mediation' process is universal avoids questions about the extent to which particular styles of mediation are 'culture-bound'. How 'culture-specific' is mediation as practised in the USA and Australia? Does it suit people from other cultures? To what extent can the kind of modifications of the process envisaged by Folberg and Taylor be made to suit 'ethnic values' without turning mediation into some other form of conflict resolution? Should mediators be conscious of the extent to which their own values affect their behaviour in mediation and make them something other than mere 'neutrals'?

In September 1987 the National Institute for Dispute Resolution, Washington, DC, published an issue of its **Dispute Resolution Forum** devoted to 'an initial examination of the impact of culture on dispute resolution'. Professor Stephen Weiss wrote of the several popular manuals that have appeared aimed at preparing American negotiators for dealings, commercial and political, with 'foreigners' and noted that 'single conventions or tactics...usually do not educate us about the "spirit" of the interaction, the interconnected rules and procedures, or even the defining features of the interaction'. Noting that 'it seems we have a long way indeed to go', he refers to the numerous pitfalls in the way of research in the area of culture and negotiation and draws attention to several relevant issues:

- 'Multiple Cultures': people from a particular country may be influenced by several 'cultures' - national, ethnic or regional, organisational and so on;
- 'Consistency vs. Paradox': individuals may not always behave according to a consistent code or style;
- 'Consistency vs. Change': some aspects of culture change over time and others may remain stable - 'practitioners who use outdated models as maps for their negotiations may run right into unmarked obstacles or become utterly lost';
- 'Aggregate vs. Individual Patterns': 'To what extent can one expect descriptions of an aggregate or of a "modal personality" to inform interpretation of the behavior of one individual in a particular situation?'

Weiss refers here to the doubts that have troubled researchers about work that was done in the 1940s on 'national character' - in books like Ruth Benedict's on the Japanese and Geoffrey Gorer's on the Russians. We all continue to observe differences in the

behaviour of people from different parts of the world and sometimes lay claim to national characteristics for ourselves but social scientists have retreated somewhat from the assumptions on which Benedict and her colleagues based their work.

Weiss's observations on the options of negotiators in intercultural situations also have some relevance for mediators. He notes that negotiators may adopt or match the ways of the counterpart, adapt their 'usual style somewhat to the counterpart's or ignore the counterpart's ways' - naively, believing it has no bearing on behaviour, or in an informed way, treating the situation as unique and concentrating on the 'particular traits and capabilities of the individuals present'.

A second article, by Susan Goldstein, 'Cultural Issues in Community Mediation', looks at 'intercultural mediation' - 'situations in which the mediator is culturally different from the disputants and/or the disputants are culturally different from each other'. She begins by noting that 'there are few empirical studies directly addressing the issue of intercultural mediation' but indicates that 'cross cultural research' suggests that any interactions between people of different cultures are likely to be characterised by 'ambiguity' and 'anxiety':

- ambiguity because 'both the meaning of the behavior of others and the motives underlying it may be unclear' (she cites the example of avoiding eye contact - a sign of respect in some cultures which may be wrongly attributed to resistance or hostility);
- anxiety because of communication difficulties and attribution problems of the kind instanced above, which in turn make it difficult for people to feel comfortable and make others feel comfortable; 'cultural differences in ways of expressing the resulting anxiety and in methods for coping with stress further complicate the situation'.

She suggests that mediators learn more about other cultures and 'stay flexible in their attributions' (their interpretation of the behaviour of others) to reduce their anxiety and that they provide 'a culturally appropriate form of the mediation process' to reduce the anxiety of the disputants. She notes that the most common approach in intercultural mediations is to ignore culture altogether, often because of sensitivity about the association between the attribution of cultural difference and arguments of

minority group inferiority. A second approach is 'to match mediators and disputants by culture' and she notes the logistical problems and also the doubts about the appropriateness of the policy, suggesting that research may shed some light on the issue. With no such research available on mediation, she turns to research in the field of therapy and counselling, which has reported that 'culturally similar counselors are more preferred, have greater empathy, have a higher return rate, and have more positive outcomes'. But she notes that other studies 'seem to suggest that non-cultural characteristics such as style, image, experience, and sex may be more salient' and suggests that strict 'matching by culture' would both ignore such other and possibly more important aspects of the individual and 'assume similarities which may not exist'. Her conclusion:

- Community mediation centers might consider applying this matching approach on a case-by-case basis taking into account such variables as language usage, acculturation, stated preference at intake, and the nature of the dispute.

Goldstein notes that a third approach 'emphasises a cross-cultural perspective in the selection and training of mediators'. This seems to be a necessary preliminary to any policy of matching. She notes that it can also serve 'to identify and change culture-bound administrative or training practices'. Training can make mediators more aware of cultural differences in, for example, attitudes towards conflict (whether this is viewed negatively or tolerated), confrontation (avoided in many 'eastern' cultures) and self-disclosure. She suggests that it may help 'to de-emphasise confrontation and increase the use of caucuses' in some inter-cultural matters. Referring to the subtleties of cultural differences in verbal behaviour she stresses the need for those working with translators (interpreters) 'to familiarise themselves with the process and limitations of translation in mediation so they can learn to facilitate its use'. Mediators also need to be familiar with the nonverbal behaviour of different cultures. Noting that cultures differ greatly in the way they regard the self-disclosure of personal information and feelings as appropriate, she also draws attention to the fact that some parties may think it proper that mediators should reveal more about themselves than most American mediators might consider appropriate. She suggests too that mediators need to be alert to possible cultural differences 'in the use of reason/logic' which may lead to 'the perception that the thinking of another participant is rigid at one extreme or random at the other'.

Goldstein concludes with the comment that 'new empirical research' on cultural differences in 'conflict management style' and 'indigenous forms of dispute resolution' is essential and, on the other hand, that more study of mediation and of the relative importance of its various components may allow for more modification of the process to accommodate cultural difference.

This issue of **Dispute Resolution Forum** helped to provide a framework of ideas for the workshop conference organised in Sydney in 1988 by the Alternative Dispute Resolution Association of Australia Inc (and co-convened with the Office of Multicultural Affairs) and certainly confirmed that little research is available which might throw light on the problems faced by mediators in a multicultural society. The conference itself provided an opportunity for a useful interchange of ideas and experience and stimulated thinking about the questions that need to be answered. Barbara Wertheim, keynote speaker at the conference, saw one of its essential tasks as 'to examine ...models of dispute resolution... to identify the assumptions built into them ...to better evaluate the appropriateness of the processes'. Linda Fisher, in her overview, conceded that the conference did not produce 'all the answers' but rather, a list of 'the right questions to ask. For instance:

- 'what is the relationship between cultural and other factors (such as psychological and social factors) in dispute resolution?'
- 'what is the role of third party neutrals in across-cultural mediation? Should mediators always come from the same cultural backgrounds as disputants? To what extent should they intervene to redress power imbalance? How does the use of interpreters affect the balance of power in a mediation session?'
- 'what strategies need to be developed for dispute resolution in Aboriginal communities? Do different strategies need to be developed for resolving Aboriginal/Aboriginal disputes as distinct from Aboriginal/Celtic disputes?'
- 'is ADR (consensus decision making) culturally biased? Should the dispute resolution process reflect the culture of the disputants?'
- 'how does one define culture? Can one define culture? Should one define culture?'

Since work on this research project began an article has been published in the **Negotiation Journal** (April 1989) by Professor Neal Milner and Vicki Shook reporting

on two years' work of a Comparative Seminar on Disputing in Asia and the Pacific as part of the Program on Conflict Resolution at the University of Hawaii ('Thinking about interdisciplinary inquiry on culture and disputing'). Hawaii being 'an ideal environment for multicultural studies', the Program committed itself to an emphasis on cultural aspects of disputing and dispute settling. This account of the difficulties the seminar participants had in considering the possible planning of interdisciplinary studies in this field has provided some comfort for those struggling with the problems of actually carrying out this CJC study, as well as providing some support for tentative views about the underlying difficulties of research in this field. The seminar spent some time considering cross-cultural studies of dispute handling in different parts of the region but also embarked on a trial study of a particular inter-cultural dispute in Hawaii. The participants included people who had studied cultures and people who had studied disputing but no one had studied culture in disputes. They noted the 'lack of a solid core of literature on culture and disputing' and there emerged a 'deepening sense that any generalisations about culture and disputing needed to be qualified and must take individual circumstances into account'. They faced the need to examine their own cultural assumptions and the 'implicit or explicit values' in the ADR movement, considering such questions as whether ADR may be used as 'an agent of socialisation', whether the vocabulary of ADR is culture-bound and whether the US style of ADR may 'threaten the existence of indigenous forms of dispute resolution'. Comparative analysis was seen as 'problematical, full of pitfalls and culture-bound traps'. Some of the observations made are relevant to the Australian and the CJC experience:

- 'Cross-cultural studies ...indicate that the distance from the parties that U.S. mediators seem to seek is quite atypical.'
- 'Mediation should not be seen as an activity carried out by value-laden parties and a neutral mediator; instead it should be conceptualised as an interaction among value-laden participants.'

The discussions led seminar members towards what has been labelled a 'naturalist paradigm of inquiry' as distinct from a 'positivist paradigm'. They were uneasy about developing taxonomies and making generalisations, cautious about establishing causal linkages or distinguishing cause from effect. The authors conclude that 'there is still much to be done on the relationship between culture and disputing' and that the

substantive issues cannot be separated from the consideration of the 'fundamental epistemological questions' addressed in the seminar.

Since the study of the 'culture/dispute resolution' relationship is so little developed and the field so uncharted, the present study should be regarded as no more than exploratory and, indeed, as a most tentative exploration of some aspects of the field. The central purpose has been pragmatic: to provide, if possible, some hints that might help mediators and those who use their services and at least to record in a summary way something of the practical experience of CJC mediators in the handling of disputes in which cultural difference could be thought to play some part.

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4. METHODOLOGY OF THE STUDY

Preliminary analysis: The emphasis in this study is on qualitative rather than quantitative data, but the available statistics in the CJC Annual Reports and in unpublished tables relating to mediations in 1986/87 and 1987/88 were examined as a preliminary exercise. These data provided indications of the usage of the CJC service by people of non-English-speaking background (NESB); on the extent to which clients preferred to use languages other than English in mediations; on the extent to which racial or ethnic difference, 'racism' and cultural differences of various kinds were cited as explicit causes of disputes; on the outcomes of mediations according to national origin and language spoken, as well as providing some basis for considering whether particular groups might be over- or under-represented in the CJC intake. The limitations of these data are apparent: they all relate to the people who present their dispute to the CJC (party A's); no reliable data are collected on the responding parties (party B's). Since it takes two to make and to resolve a dispute, the lack of statistical data relating to respondents is significant but the available figures do provide some useful indicators.

Another preliminary exercise was to examine just over 200 intake records at the Surry Hills CJC for the period July-November 1988 to extract similar data on the outcomes for NESB users of the service and on the extent to which explicit racial abuse, harassment or other aggressive behaviour featured as a cause of complaint in the whole range of matters presented to CJC, as opposed to those for which mediation sessions were arranged. Here it was possible to tabulate what information was available on the ethnic/national origin of party B's as well as party A's.

Discussions with staff: Preliminary discussions were held with co-ordinators and intake officers at the Surry Hills and Bankstown CJCs in January, Wollongong CJC in April and Penrith in May. These examined the issues of:-

- cultural difference as a causal factor in disputes;
- cultural background as a factor affecting the outcome of mediation;
- how cultural differences were being, and could be, handled in mediation.

Discussion with mediators: Group discussions were held at Bankstown with 12 mediators, at Surry Hills with 10 and at Wollongong with 11 (including some attached to the 'localised service' at Campbelltown). The decision was taken not to arrange a similar discussion with mediators attached to the recently established Penrith CJC which has relatively few NESB clients. This decision was borne out by examination of the questionnaires completed for the February/April period, which showed only 11 mediations (of a total of 73) having any significant 'cross-cultural' element.

Questionnaires: On the basis of these preliminary analyses and discussions, two questionnaires were drafted to be completed by (a) mediators and (b) on a voluntary basis, by users of the service who attended mediations in February/April. Copies of these forms are at Appendix A and Appendix B.

The intake forms completed by CJC staff contain some relevant information, generally identifying the age, sex, occupation, national origin and language of Party A and some sketchy information on Party B, as well as indicating whether an interpreter is required for the mediation and providing some information about the subject of dispute. The eight page 'de-briefing' forms require mediators to report in some detail on each mediation session. Where cultural difference has emerged as an issue in the dispute or in its resolution this will appear in these reports.

The questionnaires for mediators were therefore designed to elicit only additional information which might ordinarily not be covered in the routine reports. The form was designed to elicit mediators' observations on four main aspects of the session:

- matching of mediators and parties;
- culture as a causal factor in the dispute;
- culture as an aid/impediment to dispute resolution;
- interpretation.

In drafting the forms for users it seemed even more important to keep the questions to a minimum and to restrict the questionnaire to one page including explanatory material. The form sought the views of the parties on:-

(1) the helpfulness of the mediation and its fairness; and

(2) the cause of the dispute.

It also provided an 'open-ended' invitation to offer views on the mediation, in a final 'any comments' question. It was emphasised that completion of the questionnaires was entirely voluntary.

The first question, asking whether the session was helpful, was seen as likely to elicit positive responses from those whose disputes were settled, and negative ones from the parties when no agreement was reached, but it seemed to provide a logical starting point and a 'soft' entry into the rest of the questionnaire. By asking questions (2 to 4) about the understanding shown by mediators, it was hoped to test perceptions about 'matching' and generally to check whether users perceived the process as 'fair'. Question 5 invited users to identify various kinds of 'differences' as possible causal factors: differences in age, language, country of origin, religion, customs/attitudes. 'Different values' was rejected as possibly not being generally understood, and 'different customs/attitudes' substituted. It might have been better to separate 'different customs' (which clearly suggests different cultural backgrounds) and 'different attitudes/values' which most users saw as a necessary cause of their problems. Many respondents used the 'other differences' section to explain just what 'attitudes' caused problems. The final 'any comment' space was most commonly used to commend the mediators, the process and the CJCs.

Questionnaires were prepared only in English. Pains were taken to make them easy to understand and it was envisaged that any participants who were keen to complete the questionnaire but were not literate in English could be helped by the mediators/interpreters. Time was short and, given that the great majority of participants were likely to be able to deal with a questionnaire in English, if they chose to, it did not seem that translations into even a few languages - say Italian, Greek, Spanish and Arabic - would be justified for the purposes of this study.

A reasonable proportion of users close to 60 per cent responded to the invitation to complete the forms. Excluding sessions which did not take place because one or both parties failed to attend, 242 mediations were held in the period and one or more users' forms were returned for 139 of these. A number of sessions ended abruptly without agreement and mediators did not consider it appropriate to offer the forms. Up to 4 and

5 forms might be completed for a single mediation and overall a total of 272 forms were returned.

The users' forms were first examined separately to identify mediations where 'cultural difference' might have been perceived as important in the dispute. All mediation reports for the period were then examined, noting those mediations aborted when one or both of the parties failed to attend ('No shows'), as well as those for which mediators completed questionnaires. These were correlated with the related users' reports and the responses analysed. (In order to allow this correlation and possible follow-up for interview it was decided that it was necessary to identify all forms by file numbers, and it was explained to users that they might be invited to discuss the mediation later.)

This analysis showed which mediations seemed relevant to the study and which might be of special interest for follow-up interviews. But in addition mediators were invited to nominate which of their sessions in the three months seemed most interesting and relevant for the study. At the Bankstown CJC an independent examination of the reports was made and a list made of 13 mediations that seemed particularly relevant.

Both CJC staff and mediators were concerned that follow-up contacts with clients might risk reviving disputes, by reminding parties that agreements had not been fully implemented or stirring dormant hostility. Examination of the questionnaires also indicated that mediators' comments were likely to be substantially more helpful, for the purpose of this study, than the views of the users. Just one mediation was nominated by mediators as being successful enough to suggest that follow-up contact involving interviews with the parties would not be potentially damaging.

The interviews with the parties to this mediation were conducted by telephone with one of the two Party B's and with one of the two Party A's who had taken part in the session. They focused on the extent to which the agreement had been observed and the lasting effects of the mediation.

In the circumstances it was not appropriate to explore in any depth other issues, such as:

- whether cultural differences were seen as significant in the dispute and in shaping the continuing relationship;
- whether the mediation process was seen as useful in exposing the cultural origins of the dispute;
- whether the mediation process was perceived as generally fair or as clashing with the values of the NESB Party A's.

Interviews with mediators took the form of discussions which explored similar issues:

- whether racial/ethnic prejudice played a part in the dispute and how this was dealt with in the mediation;
- whether language difficulties played a part in poor communication;
- whether awareness of cultural differences was a factor in resolving the dispute and how this was developed in the mediation;
- whether either party's cultural values seemed to clash with the mediation process.

As well, questions about interpretation were explored where this was appropriate.

Six mediators were interviewed (one by telephone) and a total of 12 separate mediations were discussed, rather than the 5 mediations originally planned in the research proposal. In some instances the co-mediator involved was not available for interview or was hard to contact, and on reflection it seemed more useful to examine in some depth a wider range of mediations than to discuss fewer mediations with both mediators. The interviews also dealt with general issues and mediators often referred to their experiences in a number of other, earlier mediations in the course of discussions.

It was not proposed that the researchers should attend relevant mediation sessions. This would have complicated the task of those responsible for arranging the sessions, who would have had to identify in advance those where cultural difference was likely to be a factor, then establish that both parties were happy to have an observer present and inform the researchers. It would have added to costs and could have had unpredictable effects on the mediation process. The 'participant observers' in this study were the trained mediators who reported fully on sessions as soon as they ended.

Analysis of 1988 mediator reports: Before reports on the February/April mediations were available, an examination was made of just under 500 reports by mediators on sessions held between January and December 1988, noting-

- whether either party was of NESB (this required checking the file 'Intake Record' whenever other evidence suggested that NESB parties might be involved);
- whether an interpreter was engaged or mediator(s) interpreted;
- any observations on cultural factors, prejudiced attitudes, and the behaviour of the parties where these seemed relevant;
- sometimes, the nature of the issues discussed; and
- the outcome of the session.

The reports examined were from the files at Surry Hills (250), Bankstown (164) and Wollongong (69). At Surry Hills and Bankstown the procedure was to examine mediators' reports on every mediation in the chosen period, so that the 414 mediations included the usual proportion of 'no shows' (21) and of mediations in which 'cultural difference' was clearly not a factor and where no NESB party was involved (244). The remaining 149 reports were checked in detail. At the Wollongong CJC a different procedure was followed: mediations were chosen on the basis that one or both parties were apparently of NESB. The 69 mediations at Wollongong represented a selection from about 200 mediations. (But they included 11 matters for which no mediation eventuated, either because parties did not attend or the dispute was settled before the session was held.) Overall therefore just 200 relevant mediations were examined from a total of some 600 files.

Overall the shape of the study has been modified to some extent as it has proceeded, in collaboration with the mediators and staff of the CJC and in response to their concerns and perceptions. More emphasis has been placed on the qualitative information emerging on the processes of mediation, and less on the quantitative analysis of the data.

5. CULTURE AND MEDIATION IN THE COMMUNITY JUSTICE CENTRES

From their inception the CJCs have aimed to make their services accessible to and appropriate for members of all ethnic groups in the Sydney/Wollongong region. Information leaflets about the service have been printed and distributed in 23 languages other than English. Staff at the centres who provide intake services have generally been people who speak at least one language other than English, and interpreter services are called upon as necessary in the intake process.

CJCs have 'made a concerted effort to recruit mediators from the ethnic communities' (Annual Report 1986/87) and about half the mediators are of non-English-speaking background (Annual Report 1987/88). The CJCs assign mediators who 'reflect aspects of both disputants' for each mediation session (Annual Report 1986/87). Cultural background, language and immigrant origin are among the factors considered, though gender, age and experience may be most commonly the factors in determining the selection of mediators. In matters where one or both parties speak, and prefer to use, a language other than English, interpreters are arranged or mediators are selected who are able to use the relevant language. In all these ways the CJCs have sought to make the service a genuine community service, accessible to all groups, including Aboriginal people, recent immigrants and people of non-English-speaking background.

The success of this effort is evident in the statistics on the use of the service. In 1987/88 '31 per cent of users were of non-English-speaking origin'. (A user in this instance means the presenting party or 'Party A'; information provided about the background and language of 'Party B' is often unreliable and in many instances no such details are provided at all). A total of 2891 files were opened in 1987/88 and in 474, or about one-fifth, of these cases Party A stated a preference for using a language other than English. The individual languages most often mentioned were:

Greek	(80)
Italian	(74)

Serbo-Croatian	(52)
Spanish	(52)
Arabic	(47)
Macedonian	(29)
Turkish	(18)
Polish	(17)
Portuguese	(14)
Russian	(13)

Other European languages accounted for 48 users and other Asian languages for 27 users. The CJC Annual Reports record that 'Asian languages' have been 'consistently under-represented in the case-load'.

Data on the country of birth of Party A show that 69.6 per cent of users were either from Australia (61.1 per cent) or other English-speaking countries. Four individual countries were significantly represented among the 30 per cent from non-English-speaking countries:

Yugoslavia	4.5 per cent
Italy	3.3 per cent
Greece	3.1 per cent
Lebanon	2.0 per cent

Other European countries and the USSR accounted for 7.5 per cent, south and east Asia for 3.5 per cent, other Middle Eastern countries 1.7 per cent, African countries 1.8 per cent and South America 1.2 per cent.

The uneven distribution of ethnic populations in the Sydney/Wollongong region means that each of the CJCs deals with a clientele of noticeably different ethnic composition. The particular language skills of staff in the centres are exploited by transferring some clients from one to another and this practice leads to some skewing of the figures - for example, increasing the Greek clientele at Surry Hills and the Italian at Bankstown - in the following table:

Country of Birth	Surry Hills	Bankstown	Wollongong
	%	%	%
Australia	53.0	59.3	62.9
Other English speak	10.1(63.1)	5.3(64.6)	13.5(76.4)
Yugoslavia	2.2	4.7	4.3
Italy	2.9	5.5	3.5
Greece	5.9	3.3	0.8
Poland	1.6	1.3	1.5
South America	3.2	0.8	1.8
Arabic sp. countries	2.1	4.7	1.1
Asian countries	7.2	7.2	2.8

Since over half the users are referred to the CJCs from the justice system - from Chamber or Bench magistrates, from police or from legal aid centres or solicitors - use is substantially a reflection of involvement in that system. If people of Asian origin are under-represented, this is likely to reflect the fact that they are less involved in the formal justice system than Australians generally. ('Asian' here means essentially people from south and east Asian countries, since Turkey and 'Arabic countries' are separately counted.) This may mean that people from Asian countries are more law-abiding or less litigious or both. It need not be taken as an indication that the CJC service is not perceived as a useful or appropriate service. It may be more appropriately seen as a sign that these people are successfully avoiding strife, or finding alternative ways of handling it, rather than as an indicator of the failure of the CJCs to serve them.

Common sense suggests that cultural backgrounds are likely to influence the way people deal with, for example, problems with their neighbours: people from one part of the world may generally be more assertive, even aggressive, in pursuing what they perceive to be their rights; others may tend to avoid contact, even opt to move rather than confront a difficult neighbour. The figures suggest, for example, that users of Italian origin are probably represented approximately in proportion to their numbers in the Australian population, but people from Yugoslavia and perhaps Greece may be somewhat over-represented. Again it seems that this is likely to reflect over-representation in the overall justice system, rather than any particular attraction to the CJC service.

Individual differences can be at least as important as cultural differences. Some individuals in any society will be more swift to take offence than others; some will be more inclined than others to blame anyone but themselves when things go wrong and less prepared to make any concessions to someone who they believe has hurt them or damaged their interests. Differences in education and class differences - whether measured in terms of occupation, income and wealth, or other perceptions of status - are likely to be reflected in the ways people handle disputes and the extent to which outside authorities and agencies are likely to become involved.

The files of the CJCs demonstrate that all manner of people find themselves in conflict with others in ways serious enough to lead one party or the other to seek outside help. In examining the matters where cultural differences may be a factor - the minority of matters involving NESB people - it is important to keep in mind that the great majority of disputes that come to the CJCs involve Australians of Anglo-Irish background. Even among the matters where one or both parties are of NESB, those involved are often thoroughly acculturated and in many matters mediators can detect no suggestion that 'cultural difference' has affected either the dispute or its resolution.

The CJCs and the methods of mediation they use are cultural artefacts like other institutions for resolving disputes. They reflect and promote certain values. Some of the underlying assumptions are conveniently set out in a useful leaflet published by the CJCs, 'Got a prickly problem: some suggestions on how to deal with conflict'. It is here suggested that, if one is in conflict with another person, it is good and useful

- to deal directly with that person;
- to state clearly and explicitly what the issues are and
- to state all the issues;
- to express one's feelings openly;
- to avoid blaming or abusing the other person;
- to listen to the other person's side of the story; and
- (of course) to avoid violence.

Most Australians would probably agree that these are commonsense propositions - though few may actually follow them in all their disputes.

The assumption underlying the effort by the CJCs to make the service accessible to NESB people is that the mediation method will be as useful and appropriate for them as for other Australians. But one does not have to look far afield to find people who conventionally adopt other ways of handling disputes. Aboriginal people sometimes address their community at large about a grievance, carefully avoiding directing any words at the person they hold responsible. Javanese, we are told, are reluctant to acknowledge that there is a dispute or difference at all and find ways of indicating their dissatisfaction that to Americans or Australians are likely to seem absurdly indirect. More dramatically, the tradition of the vendetta or 'blood feud' in many societies endorses the legitimacy of extracting satisfaction for an injury, real or imagined, by killing or injuring any member of the family of the person who inflicted the injury.

It seems probable therefore that some people of NESB - as well as many Anglo-Australians - will find aspects of the mediation process for one reason or another inappropriate or unappealing. There is some evidence to suggest that cultural difference may have an effect on the process and the outcome of dispute resolution work by CJCs and this will be examined in section 7, before moving on to consider the ways in which such differences are and can be provided for in mediation.

But first, in section 6, we examine the extent to which cultural difference emerges as a factor in causing or exacerbating the disputes which are presented to the CJCs.

6. CULTURAL DIFFERENCES AND DISPUTES

6.1 'Racial' disputes

The CJC Annual Report for 1987/88 recorded that 'racial or ethnic' differences were cited by Party A's as a factor in a total of 255 matters and other cultural differences (including those related to gender, lifestyle, generation, class, religion) were mentioned in 271 matters. This was the first year in which these factors were coded in the analysis of the nature and complexity of disputes presented to the CJCs. Each dispute is coded with up to six different factors; the complaints recorded depend largely what seemed important to the presenting party at the time of the initial interview. Additional factors commonly emerge in the course of a mediation. These figures indicated that racial or ethnic differences may be seen as a causal factor in less than ten per cent of all cases presented to the CJC.

In an analysis of a sample of 205 'intake records' at Surry Hills CJC in the period July to December 1988, 'racism' was mentioned as a factor in the initial presentation of the dispute in just 12 matters or about 6 per cent of the sample. In the files on these matters phrases were used like 'racist remarks', 'verbal racist aggression at work', 'racist abuse', 'racial abuse and harassment', and use of the expressions 'bloody wog', 'dagos'. The targets of such abuse represented a range of different ethnic origins: Greek (3), Indian, Egyptian, Czech, Mauritian, Chinese, Moroccan, Argentinian, Malaysian and Italian.

The analysis of a sample of 414 mediations arranged in the calendar year 1988 at Surry Hills (251) and Bankstown (163) showed an even smaller proportion of disputes where racial/ethnic difference was stated to be a contributing factor (15 mediations or 3.6 percent). In these cases, the suggestion of racist feelings was variously made on presentation of the dispute, during mediation (generally in 'caucus' when the mediators talk with each party separately) or in the mediators' 'de-briefing' report:

- In a dispute about a common fence, a Greek Party B raised the 'racism' of Party A in caucus but it was not discussed in joint session. Party A was judged by mediators to be unstable and hostile, wanting to 'show WASP superiority'. (Agreement was reached with the help of the sons of each of the parties.)
- Party A, in dispute with his German neighbours showed 'racial prejudice', extreme hostility and belligerence throughout the session. (No agreement was reached.)
- In a dispute about a garage, Party A was of Chinese origin and Party B's 'racist feelings' and 'feelings of envy and jealousy' were considered to be contributing factors. (Agreement was reached but neither party was interested in improving the relationship.)
- The 'racist attitude' of Party A towards the Australian-born party B of Sicilian background was seen as a contributing factor in a dispute. (An oral agreement was reached before Party A left the mediation while the mediators were in caucus with Party B.)
- Party B, of Dutch background, had abused her neighbour, Party A, from Peru, using 'racist names'. (An agreement was reached.)
- In a dispute between two women neighbours, a Laotian Party B perceived 'racism' as a factor. Mediators noted that Party A showed indications of 'paranoia, persecution complex' and, apparently fearing the possibility of B 'winning', shifted her ground, making agreement impossible.
- Party B, of English origin, in dispute with Lebanese neighbours about noise and children's behaviour, was said to have indulged in 'racial remarks and swearing' and to have a 'hostile and bitter' attitude. (An oral agreement was made.)
- An Australian-born Party A of Italian background was described as 'calm and tolerant'; the elderly, perhaps senile, Australian Party B was reported to have been 'noisy, loud, rude, over-bearing, intolerant and racist - completely uncooperative and became more so'. (No agreement was reached.)

In five of these 15 mediations no agreement was reached. It is hardly surprising that the extreme prejudice and hostility observed in these sessions should have been an obstacle to settlement. Nevertheless, the fact that agreements were made on some or all of the issues in dispute in two-thirds of them demonstrates the effectiveness of mediation even in the most unpromising circumstances.

The 1988 mediations examined at the Wollongong CJC were not randomly sampled but chosen in order to provide examples of disputes involving NESB parties, and particularly parties of Macedonian background, since staff and mediators had suggested that they were often unwilling to compromise, to make any agreement. 'Racism' and 'racial feelings' were noted as factors in three matters; the NESB parties involved were Arabic-speaking, Italian and Pakistani. The prejudice did not seem especially strong in these disputes and each mediation resulted in an agreement. More mediations entailed some significant factor of cultural difference.

In the mediations held during February, March & April 1989 racial and ethnic prejudice and hostility were also not particularly conspicuous as a cause of disputes. Among 63 mediations at the Surry Hills CJC there was just one involving a party who showed strong 'anti-ethnic' prejudice:

- An elderly, third generation Australian male, who had to retire early, demonstrated a conviction of his 'cultural superiority' over his neighbour, of Greek background, who emigrated some 30 years ago. Party A was 'insulting, hostile, bitter, racist, prejudiced, uncaring', given to 'anti-ethnic racist remarks and gestures'. Party B felt threatened in several ways by this hostile and aggressive neighbour. Mediators opened up the issue of Party A's insulting and hostile behaviour, providing Party B with the opportunity to tell Party A how it felt to be persecuted in this way. (An agreement to try to live in peace and conditional agreement to withdraw the several summons taken out by each of the parties was reached.)

It is interesting to note that in his response to the questionnaire Party A denied that any of the listed differences caused or contributed to the dispute and wrote in 'unknown reasons'; Party B, however, indicated that speaking different languages, being of different ages and coming from a different country were all contributory factors.

In another matter one party felt that she was a victim of 'racial persecution' and had already been to the Anti-Discrimination Board:

- Two women, neighbours were in dispute over a number of matters. Party B, of Indian background, perceived her neighbour as 'anti-Indian' and thought she was organising a hostile group of neighbours, but Party A denied any hostility. Mediators thought 'class, education and ethnic differences all contributed'. (An agreement was reached.)

'Racial' prejudice was manifest in two mediations:

- An English immigrant couple in dispute with their Indian neighbours were abusive and were in turn abused. Mediators noted that the parties managed to move towards settlement of the issues 'by controlling the urge to call each other "pom bastard" and "black bastard" etc'.
- In the course of mediating a dispute between Spanish and Maltese neighbours, the Spanish party made an observation to one mediator about 'Maltese always bludging'.

In all these disputes where some sort of 'racial prejudice' was alleged or evident, whether or not the issues were settled by agreement, the reports do not often suggest that the hostility of the prejudiced parties was much affected by the experience of the mediation session. Mediators routinely seek to give the parties who feel that they are the object of such prejudice and the target of racial abuse the opportunity to tell the other party to the mediation just how they feel about it and this may relieve the feelings of the offended party, even if it cannot be relied on to change the attitudes of the offender. The experience of having their prejudices noted and discussed but clearly not endorsed or accepted may well have some salutary effect on some parties to the mediations. And mediation sessions are likely to have a significant effect on the behaviour of prejudiced parties, at least in the short term.

It is perhaps worth noting that only a minority of these 'racial' disputes involved a party from an Asian country.

Alternative means are available for dealing with explicitly discriminatory behaviour, especially in employment and in access to public facilities. In Sydney people who have complaints of racial discrimination may seek redress through the Anti-Discrimination Board, using either State legislation or the Commonwealth Race

Discrimination Act 1975. But even allowing for this, the number of matters where racial or ethnic hostility is apparent in these samples of CJC mediations is small enough to indicate that in Sydney and Wollongong such hostility is not an especially important or frequent cause of dispute serious enough to lead people to seek outside intervention.

It should also be noted that none of these disputes came to notice as a simple 'racist' complaint - an objection, for example, to living next door to a 'foreign' person or family. Victims of racial/ethnic abuse seek help from the legal system; even the violently prejudiced recognise that a general objection to the race or 'foreignness' of people - to what they are, as distinct from what they do - is not a legitimate ground for complaint. Where the presenting party (Party A) was apparently prejudiced, the stated cause of complaint was some alleged action (or failure to act) by the NESB Party B. At least to this extent, the message of government and community disapproval of racial/ethnic prejudice and discrimination seems to have made its point.

6.2 Cross-cultural misunderstandings

In some nine other matters in the February to April 1989 sample, ethnic/cultural differences played a part in causing misunderstandings that contributed to the disputes:

- Neighbours of different ethnic origins - Party A described as a 'conciliatory Chinese' (from Singapore), Party B 'an emotional Italian' - were in dispute about a fence. Mediators thought that Party B's 'background of conservative, traditional values made adaptation difficult'. Considerable mistrust and aggression was evident in the session but it 'miraculously achieved agreement and renewed friendship between them'.
- In dispute with an Italian neighbour, Party A had seen the loud talk of Party B as threatening, but in mediation realised that the man habitually spoke in a very loud voice. Agreement was reached.
- Young people in a group tenancy found themselves in dispute with a Lebanese family next door. Cultural differences, particularly with the mother of the family, were seen as causing misunderstandings and poor communication. On the one hand the Lebanese family could not understand why a group of young people was living together, not with their parents: were they orphans? Or were their

parents wicked people who had turned their children out? Or were they bad children who had left home? They had decided that the group was made up of 'dole bludgers'. (Some worked, some were students.) On the other side of the fence there were different suspicions and irritations: why did the mother come out and hose the back of the house early in the morning? Why was an outside light left on at night? Why were they constantly fighting? (The mother spoke loudly to her daughters.) Why did they get no thanks for a Christmas gift of chocolates, intended as an early 'peace offering'? (The Lebanese woman suspected that they might be poisoned and made her daughters throw them out.) The young people feared that complaints about their noise might be designed to achieve termination of their lease and feared that their neighbour wanted to buy the house. (She did not want to.) A long list of misunderstandings and much mutual mistrust was rapidly cleared away when the two groups met. Mediation improved relations between the young people involved, though the mother did not attend.

- In a dispute involving people of three different cultural backgrounds, the Yugoslav couple (Party B) felt that the Party A couple 'did not understand their need to be vocally expressive as befitting their nationality and nature'.

Mediators sometimes noted that although the parties had different ethnic/cultural backgrounds they saw no reason to suppose that this factor was either a significant cause of dispute or an issue in its settlement:

- 'Party Bs were both obviously ethnic but at no time did this seem to be an issue in the mediation.'
- 'Different ages and country of origin involved but not sure they caused or contributed to the dispute' Party B, of Egyptian background, 'separated from her husband and homeland' thought her ethnic background was a cause of the problems with her Australian neighbour, but mediators noted that the 'ethnic issue did not become a prime factor of session... we thought (it) irrelevant.'

Cultural differences within the Australian-born and English-speaking population, related to educational and class differences and the 'generation gap', can be as important as those differences which mediators expect to find between English-speaking people and those who have come from countries where languages other than

English are spoken. Mediators several times had occasion to comment on 'cultural gaps' between English-speaking parties:

- 'Cultural difference' was claimed. Was a difference between different 'Australian' cultures.... Claim by B was that (he was) discriminated against because of 'different life styles'.
- Party B thought Party A was 'upper class'
- Party B claimed his Canadian background led to expectations of 'neighbourliness' (on his part).
- In a dispute between an 'English lady, daughter of a Minister of Religion' and her neighbour, mediators remarked on the 'class factor' in her reluctance to seek 'neighbourly' contact.
- 'I consider the socio-economic background past and present to be as relevant as cultural/ethnic backgrounds...Differences in values, standards, etc, were greater between the two Australian families in the dispute.'

Such differences were reflected in the responses of users to the questionnaire, where 'different ages' and 'different customs/values' were the most frequently noted factors in causing disputes.

'Cultural gaps' between parties of the same national/ethnic background are most commonly manifest in disputes between members of the same family. The 'generation gap' notoriously causes much pain in immigrant families where children find themselves out of sympathy with the values and life-styles of their parents:

- The Australian-born daughter of a Turkish family saw herself as 'Australian' and had no interest in the men her father had in mind as possible husbands for her, but was keenly interested in an 'Australian' boy-friend. Still at school, she could not afford to leave home (she had left to stay with her older, married sister) and, after two mediation sessions, agreed to return home for the present.

Less dramatic manifestations of cultural differences between members of the same family and of differences in lifestyles and interests among people of the same ethnic origin are found frequently in the files of the CJCs. The mediation process is well adapted to the job of helping people find ways of resolving these differences.

7 DEALING WITH CULTURAL DIFFERENCES

7.1 Matching mediators

The CJC policy of having two mediators working as a team in each session provides scope for the centre 'to assign mediators who reflect aspects of both disputants'(Annual Report 1987/88 p.7). Factors other than ethnicity, language and country of origin are likely to be given priority in the majority of matters. In marital and other family disputes, for example, gender and age are considered the most important factors to consider in assigning mediators. But the success of the CJCs in attracting and training mediators of many different ethnic backgrounds, and with a range of language skills, allows scope for ethnic matching. The underlying assumption is that mediators familiar with the culture of the parties to a dispute will have better chances of success in mediating it than people with little or no knowledge of the relevant culture.

The need for mediators 'to have some understanding of the lifestyles and values of the disputants' (Annual Report 1987/88 p.6) is important in all mediations, not just those involving NESB parties. Mediators generally thought that matching on the basis of age, or rather 'life experience', was probably more important than anything except gender matching. Parties are likely to feel confident that their problems will be properly understood and fairly handled only by mediators who look and sound as if they have something in common with the parties.

- 'Mediators' training and life experiences were the vital (matching) factors. They facilitated control of session and empathy with all disputants...'

One relevant 'life experience' is the experience of migration and the capacity of CJCs to allocate mediators who have themselves immigrated to Australia, and especially NESB immigrants,to sessions involving immigrant parties may well be more important than precise 'ethnic matching'.

The question arises whether education and training might take the place of experience in giving mediators an understanding of the 'lifestyles and values of the disputants'. One centre held some seminars for mediators on the cultures of relevant countries or regions, but abandoned the scheme after three sessions. These had dealt with Yugoslav, Italian and Arabic cultures and values. The organiser noted that both questions and answers at each of the seminars were very similar. The behaviour patterns and values that were discussed seemed more characteristic of 'peasant' societies generally, than of particular national or regional cultures and the 'differences' noted were thought to be 'class' or educational differences, rather than differences between national cultures.

Co-ordinators have to select from the mediators available for the session, taking into account the nature and seriousness of the dispute, the age and gender of the parties, and their language and cultural background. Co-ordinators will also look for mediators who will work effectively together and will complement each other's skills.

Given the constraints of finding a time and place suitable for the parties and the variety of different factors to be taken into account in assigning mediators, it can never be practicable to have a mediator or mediators of the appropriate ethnic origins assigned to every session.

It may, indeed, not always be desirable. In relatively small communities a mediator of a particular ethnic background may know the party or parties in dispute and it is a firm policy of the CJCs not to use a mediator who knows one of the parties in a mediation. Mediators are often people whose work entails wide community contacts - social workers, teachers and interpreters, for example. A party may prefer to have a dispute mediated by people who have no links to that party's own ethnic community. At the Wollongong CJC it was reported that NESB and Aboriginal parties often firmly decline the offer of a 'matching' mediator.

Mediators are expected to be disinterested (but not uninterested) 'neutrals': people with no stake in the dispute and people with no bias for or against any of the parties to it. 'Matching' can be seen by the parties to disputes as working against the neutrality principle:

- In the mediation of a dispute between 'Australian' and Greek neighbours, neither mediator was a Greek-speaker but both spoke English with accents and a Greek interpreter was also present. One mediator reported that the 'Australian' party A felt isolated, felt the others were ganging up on him; the Greek party B 'seemed to act as if party A was the intruder'. (This mediation session ended prematurely because the interpreter had another engagement.)

The professional training and skills of mediators help them to establish their role as detached, not remote, specialists who may be able to help the parties resolve their dispute but will not be taking sides.

The CJCs have had little success in recruiting, training and retaining competent mediators from some ethnic communities, including for example, Aboriginal Australians, Chinese and Vietnamese. When matters involving these groups have come to the CJCs 'ethnic matching' is generally not possible. No evidence emerged during this study that would suggest that this is having any detectable effect on the success of CJCs in dealing with such disputes.

In the three-month period February to April 1989, CJC Co-ordinators were invited to record the bases on which they sought to 'match' mediators with the parties. At the Bankstown CJC a total of 39 mediation sessions involved one or more parties of NESB; some matching - by ethnic origin, by language (other than English) or by 'immigrant experience' - was achieved in 23 of these sessions; no such matching was practicable in 11 mediations; and no information was available for five. Where no 'ethnic'/'cultural' matching was possible, the mediators were matched with the parties for gender and often for age, as they are in virtually all mediations. Ten of the 11 mediations where ethnic matching was not achieved progressed to agreement (about 91 per cent); 15 of the 23 'matched' sessions produced agreements (about 65 per cent).

At the Surry Hills CJC less 'ethnic' matching was achieved: with 26 mediations involving one or more NESB parties, only 6 had one or both mediators matched for ethnic origin, language or immigrant background. All these achieved agreements and of the 20 others agreements were reached in 17 sessions (85 per cent).

At Wollongong CJC only 17 mediations (of a total of 66) involved identified NESB parties. Some 'ethnic/cultural' matching was achieved in nine of these and only one session failed to reach agreement (89 per cent success). In the eight sessions where mediators were not matched, again only one failed to reach agreement (87.5 per cent success).

Overall some 'ethnic/cultural' matching was achieved in 38 sessions and 29 of these produced agreements (76.3 per cent). Where there was no such matching of mediators to parties, the outcomes do not suggest that this was of any disadvantage: agreements were reached in 34 of 39 sessions (87 per cent). These figures do not suggest that CJCs need to increase their efforts to match mediators to parties on the basis of ethnicity, language and national origin. Rather they indicate that the emphasis given to matching on the basis of gender and age (or 'life experience') is appropriate.

When both parties are of the same ethnic background, and particularly if both prefer to use the same language other than English, two matching mediators are, whenever possible, provided. In the sample of mediations at Surry Hills in 1988, 16 involved parties of the same NESB, and just half of these involved Greek-speakers. Six were conducted entirely or substantially in Greek. Two were conducted in Portuguese and one in Spanish. Where a non-Greek speaker has to be assigned to an 'all-Greek' mediation, for example, interpretation is necessary and the task for both mediators is more difficult and the process slower. The practice and the problems relating to interpretation are examined in the following section.

7.2 Interpreters in mediation

In 1987/88, as in the previous year, '20 percent of Party A's preferred to use a language other than English' in mediations (Annual Report p.13). Party A was assessed as fluent in English in 2447 instances and as having no English in 61, though a total of 443 were likely to need some language assistance. If either party is assessed as less than fluent in English, interpretation may be necessary at the mediation session. Parties are asked if they want an interpreter and CJC policy is to meet the wishes of parties who seek this help. On rare occasions the need for an interpreter becomes apparent only when the

mediation is in progress. Where interpretation is required the options are to engage professionals or to use mediators who speak the languages.

Whoever is interpreting, the process will be slower than it otherwise would be and some mediators expressed a preference for direct communication with and between the parties even if language deficiencies meant that communication was limited or impeded to some extent.

- 'Language difficulty and the use of interpreter made communication difficult... lengthens the process and hinders direct communication between the parties.'

Sometimes the slower pace dictated by the need to interpret can be helpful in lowering the emotional temperature and giving parties more time to time to think.

Generally, however, it was acknowledged that it was important to recognise the right of parties to interpretation. Parties who may be able to communicate well enough in English to meet the ordinary demands of life, can find it difficult adequately to convey their feelings in emotionally charged situations or to deal with legal and other complexities in a mediation session.

Mediation sessions sometimes begin with interpretation, only to have it dispensed with as they proceed:

- 'B began by demanding a Greek interpeter .... negotiation was enhanced by B eliminating the need to speak Greek.'

In the sample of 1988 mediations at Surry Hills, (251), interpreters were engaged for six sessions, a relative of one of the parties did some interpretation for one session, and mediators interpreted in 11 sessions as well as using a language other than English in another 11 sessions where both parties spoke the same language. In the Bankstown sample, (163), interpreters were used in nine mediations and mediators did some interpreting in 13, including one in which Italian was used and no English was spoken. In some of the sessions where interpreters were used mediators also did some interpretation. In one session a relative of one party did some interpreting. In the Wollongong sample (69), interpreters were used more often than mediator/interpreters:

15 outside interpreters (not including a mediation session which the appointed interpreter did not attend) and six mediators. A relative interpreted in one mediation.

In the three months February/April 1989 mediators interpreted - sometimes only occasionally - in 15 sessions and 'outside' interpreters in ten. (In addition three matters were mediated entirely in Greek.)

Using mediators to interpret is convenient and economical. Interpreters are paid at substantially higher rates than mediators and mediators are paid no more when they are doubling as interpreters. Interpreting is demanding and tends to be a distraction from full participation in the mediation process:

- 'As interpreter/mediator I did have some difficulty interpreting everything while taking an active part in mediating. Still I think things go quicker with a mediator/interpreter.'
- 'As mediator/interpreter I was kept busy interpreting and was better able to observe (the other mediator's) impressive technique and self-control.'
- 'Mediator 2 role was made difficult by the need to translate - but she coped calmly with a very volatile situation.'

Mediators who act as interpreters may sometimes find they are regarded by one of the parties as an advocate or ally:

- 'I feel mediators should not be asked to interpret as this has an "on-side" effect on parties.'
- 'It is very difficult to be seen as "neutral" by the English-speaking party when trying to both mediate and interpret.'

When both parties spoke the same language but one of the mediators did not, the mediator/interpreter sometimes tended to carry the session:

- '(the co-mediator) handled most of the session due to language difficulty'.
- 'Due to language (mediator 1) had to do a lot of the work'.'I know that (mediator 2) did feel a bit left out.'

- 'Always difficult to mediate and interpret. Co-mediator should always be briefed and aware of limitations in word to word translations. Co-mediator might sometimes feel left out if parties tend to be voluble and can't be interrupted for word to word translations'. 'Sometimes it's difficult to feel still in control of the mediation.'
- 'A little sad that I didn't speak Greek.'

But the double role can be handled so well that the co-mediator feels fully, or at least quite adequately, involved:

- 'Interpretation by (mediator 1) was great, it kept me in touch with all that was said'.
- 'Other mediator knows and trusts interpreter/mediator - knows that he/she knows the process and is interpreting effectively for process'.

And mediators see advantages in not having another person involved in the communication process:

- 'Although it is more difficult trying to mediate and interpret it helps by excluding another agent and his influence.'

On the whole the use of mediators as interpreters seems to work well, demanding as it is on the mediators concerned. The use of professional interpreters has often occasioned problems.

When interpreters are competent, keep strictly to their function and allow enough time for the mediation to take its course, it is certainly seen as preferable to use specialists:

- 'Interpreter (Greek) improved our understanding of Party A whose English was very poor.'
- 'This interpreter (Greek) was helpful - did not interfere in mediation, but quietly assertively gave all full translations.'
- 'Excellent interpreter (Italian) added to A's strength.'
- 'An excellent type indeed! .... Marvellous job' (Turkish).

- 'Although (Party) B appeared to understand English well the interpreter was a help in giving B confidence and to prevent him from feeling at a disadvantage when not sure of what was going on.'
- 'If interpreter is competent then mediation will benefit in using an interpreter' (Portuguese).

But experience in using interpreters has been varied over the years and most mediators had had some unhappy incidents to report in the discussion sessions. Even in the three-month study period several most unsatisfactory situations arose:

- 'Interpreter (Italian) tried to tell mediators how to do their job.'
- 'Interpreter did not speak Macedonian, spoke Serbo-Croatian, luckily one of the mediators was Macedonian.'
- 'Interpreter (Greek) allowed one hour, mediation ceased too early with no result... interpreter was a 'know-all'..... interpreter, not very helpful, full of self-importance - and, while interpreting, not clear, mumbled a lot.'
- 'I felt the mediation could have been a success if a mediator interpreted.... no caucus because of departure of interpreter (Greek).'

Communication is central to the mediation process and competent interpretation and translation is clearly vital to its success. Sometimes all that is required for settlement of a dispute is some interpretation between non-communicating parties:

- 'No real dispute, needed interpreter to eliminate concerns of both parties due to cultural differences.'

But sometimes a recalcitrant party can defeat the best efforts of the most competent interpreter:

- In one of two disputes involving the same man in conflict with his neighbours, 'party B (Turkish) appeared not to want to understand despite valiant efforts by interpreter.'

It was reported at one of the discussions with mediators that some training courses for interpreters now include specific training in the skills required for mediation sessions. It

seems important that any and all interpreters likely to be called upon to work in mediation should have some special training to prepare them for this experience. It may be useful to discuss the difficulties and the need for specific 'in-service' or 'pre-service' training with the NSW Ethnic Affairs Commission, with the aim of developing procedures to ensure that interpreters assigned to mediation sessions are prepared for the task and are free to remain as long as they are needed.

It also seems that NAATI and any other authorities responsible for the accreditation of interpreters may need to consider the possibility of testing aspiring interpreters for their awareness of the need to observe ethical standards as well as for their technical linguistic skills.

7.3 Reaching settlement

Some problems presented to the CJCs are speedily resolved. After the CJC contacts the other party settlement may be reached either by direct negotiation ('CJC assisted settlement') or by communication through the CJC acting as intermediary ('conciliated agreement'). In some 16 per cent of all matters, contact with the CJC serves to open up communication between the parties and this is enough to resolve the problems. If the parties agree to a mediation session they may settle the matter before the mediation is convened. Sometimes the mediation proceeds, and a written agreement is made which only confirms understandings already reached between the parties.

Similarly when a mediation is held, the opportunity to communicate is often seized on by the parties who quickly settle the matter with minimal assistance from the mediators:

- 'Both parties were of high social economic background which helped tremendously in settling this dispute; very agreeable and willing. Party B very sorry for grief and fear caused by their son and friends and apologised in a very warm and understanding way.'

People with limited or no English are likely to have problems in communicating with their English-speaking neighbours and in many matters coming to the CJCs poor communication, or a total lack of communication, is noted as a factor in disputes. The mediation provides people with both the occasion for communication and the means for it, with an interpreter or mediators who speak their language.

Many users of the CJC service responding to their questionnaire expressed their satisfaction at being listened to by the other party, at simply being heard, or their appreciation of the opportunity provided to talk out their problems:

- 'Its the first time in two & half years we've talked to them without complaining.'
- 'It helped the other party to understand and stopped the strain and stress of going to court.'

In some of the most serious disputes, strong feelings of anger, resentment and hostility are involved and no negotiation on ways of resolving the problems is possible before one or both parties have had opportunities to express their feelings. But after the parties have all had a hearing, the issues are often quickly resolved.

Ventilating feelings of the disputing parties may not, however, always lead on to settlement of the dispute:

- A dispute between party A, a woman of Italian background, and her neighbour, over several issues, remained unresolved: 'stubbornness, desire to punish or blame, neither willing to accept blame... attitudes got worse - as problems discussed parties becoming more hostile, neither looking for solutions - they wanted to blame each other'... 'both parties intractable'... 'I don't know why they came here.'

Many other mediators must feel a similar sense of frustration when they find they have to deal with someone who is determined to maintain a position, to make no concessions to the other side. Some parties come to the CJC with no genuine intention of resolving their differences, actually preferring continuing conflict to making any compromises. Some people are determined to have their day in court and agree to

attend mediation believing it to be a requirement, a necessary step in demonstrating that a court hearing is needed.

Parties who are described by mediators in such terms as 'unreasonable, inflexible', 'not ready to compromise', 'hostile and intractable' or having 'no wish to negotiate' appear in all ethnic categories. Most of them are 'old Australians' or 'Anglo-Australians' who make up some three quarters of the parties represented in the sample. Some of these 'difficult' parties do reach agreement on issues in dispute through mediation, but many do not.

Of all those matters for which mediation sessions are arranged, about two-thirds are settled with an oral or written agreement and the others 'fail' because one party withdraws just before the session or fails to attend or because no agreement is reached. It would be surprising if there were not some detectable differences between ethnic groups, as well as between individuals, in the ways they respond to the mediation process. Analysis of some of the statistical correlations in the CJC records for 1987/88 do in fact suggest that members of some ethnic groups may, on average, have a better chance of resolving their disputes through the CJC than others. For most groups the numbers are so small that the differences in outcomes, shown in the tables below, cannot be taken as significant but they may indicate questions worthwhile exploring further and they can provide a test of the subjective impressions of staff and mediators.

In the first table, country or continent of origin (of party A) is correlated with some of the common outcomes in matters where a mediation has been arranged:

Country of birth	Outcome settled %	no agreement %	late withdrawal %	no show %
South America	88.89 (8/9)	-	11.11 (1/9)	
Italy	71.88 (23/32)	12.50 (4/32)	9.38 (3/32)	6.25 (2/32)
Australia*	67.53 (470/696)	11.49 (80/696)	11.49 (80/696)	6.47 (45/696)
Poland	66.67 (10/15)	26.67 (4/15)	6.67 (1/15)	
Arabic Countries	65.79 (25/38)	13.16 (5/38)	10.53 (4/38)	10.53 (4/38)
Greece	51.61 (16/31)	25.81 (8/31)	9.68 (3/31)	12.90 (4/31)
Yugoslavia**	52.63 (30/57)	24.56 (14/57)	12.28 (7/57)	8.77 (5/57)

* In addition, 17 disputes were conciliated after a mediation session had been arranged, three were referred to another CJC and the CJC withdraw from one matter.

** In addition, one dispute involving a party from Yugoslavia was conciliated after a mediation session had been arranged.

Correlating 'preferred language' of party A with the same range of outcomes enlarges the picture a little:

Language	Outcome			
	settled %	no agreement %	late withdrawal %	no show %
Spanish	81.82 (9/11)	9.09 (1/11)	-	9.09 (1.11)
Arabic	73.34 (11/15)	6.67 (1/15)	13.33 (2/15)	6.67 (1/15)
Italian	66.67 (14/21)	19.05 (4/21)	9.52 (2/21)	4.76 (1/21)
English*	66.85 (621/929)	12.16 (113/929)	10.98 (102/929)	6.67 (62/929)
Serbo-Croatian	57.70 (15/26)	19.23 (5/26)	11.54 (3/26)	11.54 (3/26)
Greek	48.00 (12/25)	28.00 (7/25)	12.00 (3/25)	12.00 (3/25)
Macedonian	46.67 (7/15)	26.67 (4/15)	20.00 (3/15)	6.67 (1/15)
Turkish	50.00 (3/6)	-	16.67 (1/6)	33.33 (2/6)

* In addition, 24 English language disputes were conciliated after a mediation session had been arranged, six were referred to another CJC and CJC withdraw from one matter.

Assuming, for argument's sake, that all or some of these differences in 'success rates' reflect real differences in the chances that people of different ethnic origins will have of reaching a mediated agreement, one might conclude that the process of mediation suits, for example, South Americans better than it suits people from the Balkans and perhaps that court or other adjudicative or arbitral procedures might be more satisfactory for Greeks, Yugoslavs and Turks, for example.

Greek-speaking people are well-represented in the intake records and in the reports of mediation sessions. In the sampling of the Surry Hills intake records for July - December 1988 (205), there were twice as many Greek-speaking parties as Italian-speaking

parties, if both parties are counted. The difference is less striking if one looks at party A only (12 Greek, 9 Italian, 9 Yugoslav, 6 Arabic).

Greek speakers account for half of the sessions conducted entirely or substantially in one language other than English: 8 out of 16. In the sample of the Bankstown mediations in 1988, Greek parties were heavily outnumbered by other NESB groups (Italians, Yugoslavs, Lebanese), but similar comments are noted on mediations where one of the parties was of Greek origin:

- 'A (Greek) irrational and walked out.'
- 'extreme hostility from B (Greek) - punctuated with violent temper tantrums and outbursts.'
- 'difficult and intractable parties.'

Some comments pointing to similar problems appear in the 1989 sample:

- 'B (Greek) left meeting when he realised we were not following court procedure.'

It should be noted that each of these instances could be matched with ones in which a Greek party was conciliatory or with examples of 'all-Greek' mediations which proceeded swiftly and calmly to an agreement:

- 'good co-operation by disputants.'
- 'co-operative and conciliatory.'
- 'reasonable, conciliatory.'

A selection of 69 mediations at Wollongong CJC in 1988 in which one or both parties seemed likely to be of NESB was examined. In 11 of these matters mediations did not proceed because matters were conciliated or parties failed to attend (7 of these involved parties apparently of Yugoslav background). Where mediations were held agreements were made in about 80 per cent of the sessions, which is close to the overall average for all CJC mediations. One or both parties were identifiable as of Yugoslavian origin in 26 matters that were mediated, and at least 8 of these involved one or more parties who were of Macedonian background. Agreements were made in 19 and no

agreements in 7 matters, so that the success ratio (73 per cent) was not far below the average. Although the success rate was lower than the average, by no means every mediation involving a Macedonian party proved difficult:

- Two Macedonian neighbours in dispute about water were 'both keen to fix' and agreement was soon reached.
- A Macedonian and his Yugoslav neighbour were in dispute over a fence problem but 'both wanted to resolve' the matter and did so.
- A Macedonian party B and the Australian party A were regarded as 'not in dispute' over a wall: both were 'cooperative and extremely friendly' and soon reached agreement.

However, other sessions involving Macedonian and other Yugoslav parties were not so readily resolved:

- 'party A was not prepared to mediate on main issues'...
  'had to be right ... hindered process at all angles ...'
- 'both parties quite fixed in considering other party was totally at fault and maintaining this feeling during all session.'
- '(party) A insisted on dominating session and refused to listen or hear what anyone had to say.'
- 'both parties refused to negotiate or communicate ... cold to the end.'
- 'both parties extremely stubborn and unyielding to reason.'
- the 'intractability and stubbornness' of party B (Macedonian), her 'all or nothing' attitude, prevented agreement being made in a dispute with her daughter.

Experience in dealing with parties as unwilling to negotiate as these were has led mediators to expect that they may have difficulty in encouraging parties of particular ethnic backgrounds to settle their disputes. (This is not to suggest that mediators are tending to stereotype disputants; training and experience also help them to assess the individual characteristics of parties as mediation proceeds.)

In several of the 'all-Greek' sessions, mediators also made some reference to difficulties in maintaining the mediation process:

- 'Some strong words had to be spoken to keep (the parties) in line and continue the mediation.'
- '(mediator Y) had to resort to some strong words.'
- '(mediator Y)'s forceful yet diplomatic abilities to control and manage disputants.'
- 'at times we had to be assertive and stop jibes.'

In one report, where the parties are described as 'unbending' but where agreement was reached, it is noted that 'caucus was the turning point'. But, since intractable and obstinate parties are found in all ethnic categories, it maybe more appropriate to consider the problem of handling such people as a general one, rather than one of particular cultures.

The differential success rates in mediation of people of different nationalities and languages are likely to reflect other characteristics of particular immigrant groups: whether, for example, they are predominantly from a rural or an urban background: or whether most are unskilled and semiskilled workers, rather than clerical and professional. There is in fact no reason to conclude that differences actually reflect characteristics of 'national cultures'. They may plausibly reflect the values of 'trans-national' cultures: people from small rural communities, from peasant farming areas, are likely to have values more in common with people following a similar way of life in other countries speaking other languages, than with fellow nationals who are living in large cities and following 'white collar' occupations.

Immigrants to Australia from another country will not always be a representative cross-section of the national society: some nationalities may be represented here mainly by people with tertiary qualifications and others emigrating at a different time may be predominantly manual workers from rural villages.

Faced with disputants who are unwilling to make concessions, to compromise, mediators may either accept that the parties are not able to settle their disputes or consider whether some intervention, possibly going beyond the 'text book' processes of mediation, may help them overcome the difficulty. Mediators are trained to act in a strictly neutral fashion and to ensure that solutions are proposed by the parties. It may

emerge in caucus discussions between mediators and parties separately that a compromise would be acceptable to both parties. But if neither party is prepared to make a compromise offer, the dispute may remain unresolved, despite all efforts of mediators to prompt such offers. An arbitral intervention must sometimes appear as an attractive option in these circumstances and could be seen as a responsible move to help the parties achieve settlement, an appropriate adaptation of the process to people's problems. At the Wollongong CJC, where concern focused on the suitability of the mediation process for people of Macedonian background, instances were cited where it had seemed necessary for mediators to adopt, briefly, a more adjudicative role in order to achieve settlement. In one instance some years ago, caucus sessions had revealed that party A would settle for less than the sum that party B had indicated he would be prepared to pay, but neither party would make the first move from his position in negotiation. The mediator intervened to propose a figure and both parties accepted this arbitral move.

As a 'last resort' measure, taken by experienced mediators when the conventional processes have failed to resolve a deadlock, such interventions might be accepted as an exceptional modification of an essentially flexible process. The CJC council has been reluctant to allow this modification to date, because in the hands of inexperienced mediators it may change the mediator's role from one of facilitation towards a voluntary agreement to one of arbitration. The process of arbitration is expressly prohibited in the CJC Act. Since the evidence suggests that some NESB people do find it difficult to offer terms, to move from a negotiating position once adopted, this may be a possible mediator technique though, if adopted, it may more often be needed to resolve disputes between 'old Australians'.

7.4 Resolving cultural misunderstandings

Most mediations fall somewhere between these 'too hard' cases and the 'too easy' ones discussed earlier, where the mediators hardly need to do more than provide a forum for communication between the parties. Many of the mediations examined in this study had to deal with disputes that arose because of, or were exacerbated by, misunderstandings arising from cross-cultural communications. As a rule the disputes

presented as routine differences about fences, trees, noise and the other common issues of dispute between neighbours and the cross-cultural basis of the misunderstandings was brought to light in caucus discussions.

Mediators often find it useful to deal cautiously with the issue of cultural differences when it appears that this may be a significant factor, and hence raise the question in private caucus sessions with the parties. The parties, and in particular NESB parties, may be unwilling to acknowledge that they are 'different' from other Australians, reluctant to concede that any cultural differences could have contributed to the problems. One mediator stressed that if it seemed that 'racist' behaviour was an issue, this must be brought out in open session, but said that the possible contribution of cultural differences might sometimes be discussed only in caucus. Mediators need to avoid any suggestion that parties are being blamed for having different values or life styles. A question along the lines of 'do you think cultural differences have been one of the causes of misunderstanding?' might be put to each party separately. Often the 'Australian' party may say 'oh yes' while the NESB party will say 'oh no'.

- In the mediation mentioned earlier, involving a Lebanese family (party A) living next door to a group of young people (party B) it was soon evident that mistrust and some bizarre misunderstandings had arisen because of mutual incomprehension about the way of life followed on the other side of the fence. Explanation of the puzzling behaviours cleared the air for both groups and the 'cultural gaps' were seen and acknowledged by the young 'Australians'. The Lebanese-Australian girls, however, were inclined to deny any 'difference'. Mediators speculated that their decision not to bring their mother to mediation may have reflected concern that her presence would have made them seem 'different' and been an embarrassment. Communication between the young people at mediation cleared away misunderstandings and suspicions and led to agreements providing a basis for cordial relations in the future. (Interview with one of the party B tenants nearly three months after the mediation indicated that complaints from party A about noisy music played in the evenings resumed after an interval; party B thought differences between the life styles of the two households were too great for real harmony, but reported that relations were polite. The older sister of the Party A family confirmed

that the noise from the neighbour house had again become unacceptable to them and more complaints had been made to other authorities.)

In other matters, mediators found it helpful to explore the issue of cultural difference explicitly in open session as well as in caucus:

- In a dispute involving a Portuguese party, the mediators saw that cultural difference was an issue and it was 'included in agenda with consent of the parties and both parties given time to talk about it'; this 'gave them the opportunity to see this was an issue.'
- In a mediation involving an Italian party B, 'parties talked at cross purposes until some realisation dawned that they were different in their appreciation of each other's lifestyle and culture.'
- A party B of Yugoslav origin was described by mediators as 'an older person from another culture expecting too much from neighbours and their children'; 'this was really the hidden agenda of the whole dispute and only limited progress was made in improving the situation'; 'caucus (was) used to explain to parties the expectations of multicultural or non multicultural people.'
- In a mediation involving an Italian party A (where one mediator was also interpreting) cultural factors were discussed between the parties and in caucus; they were encouraged to listen to the other party's side and acknowledge 'difference on both ethnic and cultural levels.'
- A Cambodian refugee couple, in particular the wife, felt threatened by their neighbour's (large) son and his friends playing cricket and sometimes hitting balls over the fence. When the problem was explained, party B 'apologised in a very warm and understanding way' for the 'grief and fear' caused by their son and his friends and had already spoken to their son about it.

The standard mediation processes seem well adapted both to revealing cultural factors that may be hidden or unacknowledged causes of disputes and to resolving the difficulties by increasing mutual understanding of differences in values and lifestyles between neighbours or indeed within families. While agreements commonly call for some changes in the behaviour of the parties, often recognition of the differences and discussion of them leads to a greater willingness to tolerate a neighbour's different way of life.

Sometimes mediators need to use some ingenuity in adapting the mediation process to the values and the habits of the parties. Mediators reported one session involving a couple of Indian background where they had no success in their efforts to have the wife express her views; her husband answered any questions directed to her. Mediators resolved the difficulty by using the husband in effect as an interpreter, directing questions through him to his wife ('what did your wife say/do/think?'). By accepting, if not endorsing, the couple's view that it was proper for the husband to speak for both, mediators were able to ensure that the wife was heard, though in a roundabout fashion, and the matter was resolved.

Only a few Aboriginal people have made use of CJC mediation services and only one mediation involving a party of Aboriginal descent was held during the February/April period. No special difficulties arose in handling this dispute between neighbours but Aboriginal people sometimes like to enlist the moral support of friends and relations in the kind of negotiation represented by mediation. The emphasis in mediation is in the face-to-face handling of the dispute by the parties directly involved and it is the practice to enlarge the group only by mutual consent. Often the other party will agree to the presence of additional people but may reasonably object to the addition of 'outsiders' with no direct involvement. Balance is important and one party may feel intimidated by the presence of a whole group of people on the other side.

Again this issue arises in mediations involving all kinds of people and general ways of dealing with it are needed, rather than special rules for Aboriginal parties. Given the voluntary basis of CJC mediation, it seems appropriate to settle all issues about who may be present and take part in mediations by mutual agreement.

8. SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

8.1 Cultural differences and disputes

On the evidence of the CJC files, a great deal of disputing is 'cross-cultural' in the broadest sense, since it entails clashes of values and of views, not just conflicting interests. The occasion of a dispute may be an apparently simple, practical question, but the way people handle this reflects their values and may turn an issue into a grievance, and then into a dispute involving third party interventions. But cultural difference attributable to national and ethnic origin does not emerge as an especially significant cause of conflict in multicultural Sydney and Wollongong.

Prejudice, ethnic and racial, was detected as a factor in a small proportion of disputes. Some parties mentioned this as one of the issues on presentation of the matter to the CJCs. Commonly that party would raise the issue at mediation and it would be dealt with as an issue on the agenda of the session. Sometimes the parties might not pursue the issue, and in some of these instances the mediators were inclined to think that the prejudice was more imagined than real. In other matters the prejudice was clearly evident and the issue might be thoroughly aired. At the Wollongong CJC it was reported that a denial of prejudice by one of the parties ('I'm not racist but...') was found to be a reliable indicator that just such ethnic prejudice would emerge as an issue, whereas if no mention was made of the matter of prejudice or discrimination in the initial presentation of the dispute it was seldom likely to emerge as an issue in mediation.

But in each of the samples examined for this study, the number of matters in which 'racism', 'racial abuse' and similar manifestations of prejudice were reported was relatively small - around 3 to 6 per cent of the totals. In the February/April sample just seven matters, or less than 3 per cent of the overall total at the four centres seemed to fall into this category and in only four of these mediations did the offended party choose to make it an issue for discussion during the session.

Because the mediation process allows scope for offended parties to talk about their feelings and explain how they feel as the targets of racial abuse and prejudice there is some prospect that it may in some way improve the relationship between the parties in these matters. It is certainly clear that disputes may be resolved or partly resolved even where strong prejudice is manifest. The service provided by the CJCs is one instrument for dealing with the consequences of ethnic prejudice in the community in an effective and constructive way.

Mediation as practised by the CJCs is also peculiarly well suited to dealing with that rather larger category of dispute where differences in life styles and values, traceable to differences in national origins and cultural backgrounds, and misunderstandings arising from language difficulties and poor communication - or no communication - emerge as causal problems. Even in the absence of marked prejudice, NESB immigrants are likely to be at risk of conflict with their neighbours because of language and cultural differences and a mediation session provides an effective forum for opening up communication and sorting out misunderstandings.

But it is worth noting that 'cultural difference' may be present without becoming a factor in a dispute involving NESB people. In the February/April sample mediators considered that 'cultural factors' actually played a part in fewer than half of the mediation sessions in which there were NESB parties. Some 40 per cent of all the mediations in this period involved NESB parties (104 out of a total of 257) but mediators considered that 'cultural difference' was a factor in only 49 of these and thought it useful to discuss the issue in only 20 of the sessions. The disputing parties were perhaps somewhat less likely to attribute significance to such factors as 'coming from a different country' or 'speaking a different language': in 23 instances where the mediators saw cultural factors as significant in the dispute and the 'user questionnaires' were completed by one or more of the parties, the 'users' considered cultural difference was a factor in just ten. Many NESB people are keen to emphasise their 'Australianness', their similarity to rather than their difference from their neighbours and co-workers.

8.2 Cultural differences and the settlement of disputes

The CJCs have sought to make the service offered accessible and useful to NESB people by employing multilingual staff to handle the intake, by using interpreters when necessary, and by recruiting and training mediators of NESB, representing the range of national and ethnic backgrounds in the metropolitan community. The importance of the intake staff at the centres is apparent from the figures showing that some 15 to 20 per cent of all matters presented are satisfactorily settled during the intake process, before a mediation session is arranged or actually takes place. Skilful work by staff talking to the parties, mainly by telephone, can also prepare the way for a successful mediation. But the focus in this study has been on the actual mediation process and in particular on:

- the 'matching' of mediators to the parties;
- the use of interpreters and the use of mediators as interpreters; and
- the mediation process itself and its suitability for 'cross-cultural' disputes and the possible need to modify or adapt the process to meet the needs of NESB parties.

Matching: Where the parties to a dispute speak a language other than English and are not fluent in English, it is plainly a great advantage for the CJCs to be able to provide a team of mediators who are fluent in that language. The parties are likely to feel more at ease with the process than they would if they had to deal with the more cumbersome procedures of interpretation and all concerned are able to focus all their attention on the issues. The number of mediations carried out in languages other than English is small - only three in the February to April period - but the outcomes tend to indicate that this procedure is effective. In the 1988 sample at Surry Hills CJC ten mediations were conducted entirely in a language other than English and eight of these concluded with agreements between the parties, a proportion matching the overall results of all mediations.

But the importance of matching parties and mediators for ethnic/cultural background in the majority of mediations involving NESB parties is less apparent. The analysis of outcomes does not support the positive hypothesis that 'ethnic matching' will be conducive to the success of mediation: when mediators were not matched for ethnicity, agreements were reached in 87 per cent of mediations in the February/April period;

when 'ethnic matching' was achieved, agreements were reached in 76.3 per cent of the sessions. For many reasons the data cannot be considered adequate to draw the contrary conclusion but it would be reasonable to conclude that matching mediators and parties on other criteria, and particularly matching for gender and 'general life experience', is considerably more important than trying to provide mediators who have specific knowledge and understanding of the particular cultural background of the parties. In this respect the study has confirmed what was the general view expressed by practising mediators and what has been the usual practice of co-ordinators in the assignment of mediators.

Interpreters: Instances of mediations which failed largely or entirely because of inadequacies in the service provided by interpreters appeared in the samples but examination of outcomes did not suggest that mediations where interpreters are used are any more or less likely to produce agreements than others. The nature of the inadequacies reported by mediators suggests that substantial improvements in the service provided could be achieved without great difficulty.

The most common complaint was failure to allow enough time and, occasionally, failure to attend at all. Appropriate administrative action could be taken to eliminate or at least reduce the incidence of these failures. Special training for mediation work and careful screening seem to be required to avoid having interpreters intruding inappropriately into the mediation process or not providing adequate and clear interpretation. An occasionally defective interpretation service may be better than no interpretation at all but good communication is too vital a part of the mediation process to settle for second rate interpretation.

Ideally, no doubt, competent professional interpreters would be provided for every mediation where a language other than English was used, except those conducted entirely in another language by mediators fluent in that language. But for reasons of economy and convenience it seems likely that the CJCs will need to continue to make use of the linguistic skills of mediators. Despite the difficulties of simultaneously interpreting and mediating, the method seems to work effectively and, as mediators report, there are compensations in not having to deal with and through another person.

8.3 Cultural differences and the mediation process

Some NESB parties (and others) find the mediation process unsatisfactory simply because, in the words of one response to the questionnaire for users, 'It was without any judgment and had no authority to point out who is wrong and who is right'. For these people the court system is available and may provide a more congenial alternative, possibly a more 'culturally acceptable' alternative. Because mediation with the CJCs is voluntary, many of those for whom adjudicative procedures have more appeal no doubt decline the offer of mediation or fail to attend sessions arranged for them. People are not compelled to submit to a process that is for cultural or any other reason unacceptable to them. It is therefore not unreasonable, having noted the cultural specificity of the mediation process, to ignore, for practical purposes, this issue, rather than to seek to change the process in fundamental ways to make it more acceptable to people from a range of different cultural backgrounds.

But in fact much can be and is being achieved by making only minor adjustments to normal procedures, adjustments which take account of the values and 'cultural preferences' of particular parties without compromising the essential principles of mediation. Mediators are adept at helping parties to face the realities of their situation and move towards mutually acceptable and reasonably satisfactory compromises without adopting an adjudicative role. In the relatively few sessions when the parties seem incapable of making compromise offers there may well be a case for mediators briefly to adopt the role of adjudicator but it might be hard to justify any radical change in the present style of mediation used in the CJCs in order to deal with the few cases in which adjudicative interventions seem to be necessary for settlement.

The mediation process applied in the CJCs seems admirably adapted to resolving the cross-cultural misunderstandings and failures of communication that play a part in many of the disputes involving NESB parties by helping people to recognise and to discuss differences in their values and ways of life and to work out neighbourly compromises or at least to develop more tolerant attitudes.

Governments may aspire to produce policies, laws and programs which reduce or even eliminate some of the causes and occasions for conflict and disputation of various kinds

in society without hoping to do away with conflict altogether. Differences in attitudes, opinions and values between individuals in a community are the source of much conflict in families and in neighbourhoods and some of these differences may be attributed to the national or ethnic origins of people who find themselves living together in cosmopolitan, multicultural cities like Sydney - to the kind of 'cultural difference' that provides the focus of this study.

Australian governments have express policies rejecting the notion that such cultural differences are undesirable and should be eliminated, and seek to promote tolerance, appreciation and respect for such differences. Governments also have adopted policies that aim to have public and even private institutions and services adapt to meet the needs of people speaking different languages, practising different religions and having different values. Sometimes expressly, as a conscious policy of the service, sometimes implicitly, because staff and mediators are selected on the basis of sharing values expressed in the policies, the CJCs and the mediators through which it provides its dispute settling service reflect these kinds of governmental policies and aspirations.

Thus when mediators find they are dealing with a dispute in which 'cultural difference' may be a factor, they may, if this seems likely to help resolve the dispute, encourage the parties to put such difference on the agenda and provide the opportunity for them to see that it was an issue. But the aim is to help the parties to face issues and perhaps negotiate between themselves some accommodation of those differences - not to change the behaviour of parties with different lifestyles or values but to open the way to greater mutual understanding of the differences. Parties may agree to change their behaviour but this sort of agreement emerges as a result of negotiation between the parties rather than from any social coercion brought to bear through the agency of mediators to conform to the local customs. The CJC practice of mediation provides a model for the kind of social adaptation necessary in a multicultural community.

8.4 Recommendations

The CJCs in NSW have demonstrated that the mediation methods they use provide an appropriate and effective means of resolving disputes involving people of NESB and in

particular disputes in which 'cultural differences' are a factor. Though such matters represent only a small percentage of all the disputes presented to the service, the CJCs make a significant contribution to the improvement of community relations in the Sydney/Wollongong region and it is **recommended**

(1) that the Commonwealth Government support and encourage the extension of adequately funded and resourced services similar to the CJCs in NSW and the Neighbourhood Mediation Centres in Victoria, to other States and to the ACT and the Northern Territory, as well as the expansion of these services in NSW and Victoria, in particular in those regions where there are significant numbers of people of NESB, to provide cost effective means of dealing with conflict in the community related to ethnic and cultural difference;

(2) that OMA, recognising the effectiveness of the CJC approach, encourage Commonwealth-funded agencies involved in the provision of services to NESB immigrants to promote the use of the CJC service, and similar services established in other States, as a means of dealing with disputes within and between ethnic groups in the community; and

(3) that OMA similarly encourage the use by employers of NESB workers of the services of the CJCs in dealing with work place disputes, especially cross-cultural disputes.

Since the deficiencies of the available interpreter services in dealing with interpretation for NESB parties in mediations emerged in this study as one of the most important problems faced by CJC mediators, it is **recommended**

(4) that OMA examine, in consultation with relevant State and Commonwealth authorities, the need and the scope for developing special training courses for interpreters designed to equip them specifically for interpretation in mediation (as well as for interpretation in the courts).

The findings of this study tend to support the view that 'matching' mediators to the cultural background of parties to mediation is not likely to contribute significantly to the resolution of disputes and that other factors are more important, but the evidence on this point is not conclusive. It is therefore **recommended**

(5) that OMA consider supporting further research into cross-cultural mediation designed to test the hypothesis that mediation is likely to have more chance of resolving disputes when mediators and parties are matched for cultural background.

This study examined the mediation process itself but mediations are held in no more than about 33 per cent of matters presented to the CJCs. It is evident therefore that the 'intake processes' are crucially important in determining the outcome of disputes. Conciliation in this phase often results in the successful resolution of the dispute (a further 16 per cent of all matters) or may lay the foundation for a successful mediation. On the other hand, parties often determine during the intake process that they will not proceed to mediation. It is therefore **recommended**

(6) that OMA consider supporting further research designed to show what factors contribute to successful conciliation of disputes involving NESB parties without recourse to mediation and what factors are significant in leading NESB parties to resist and reject mediation as a means of resolving their disputes.

APPENDICES

1. REPORT TO COORDINATOR: PART 2 - CULTURAL FACTORS

As part of a research study of cultural factors in dispute resolution, the CJC is asking mediators to complete this questionnaire on each mediation from February to April 1989. Each mediator is asked to complete a separate report. All reports will be treated as confidential.

For this study 'culture' and 'cultural factors' are broadly conceived as covering differences in values, standards, beliefs, attitudes linked to ethnic/national origin. These may be affected by factors such as religion, urban/rural, class/occupation or educational background.

Please tick the appropriate box or boxes for 'yes'
OR * Strike out inapplicable words
** To be completed by Coordinator

Names:..... File No:.....

** 1. MATCHING: You were chosen for this session because you were available ❑ and matched *Party A/Party B for AGE ❑ GENDER ❑ LANGUAGE ❑ OCCUPATIONAL BACKGROUND ❑ ETHNIC BACKGROUND ❑ NATIONAL ORIGIN/IMMIGRANT STATUS ❑

1.1 Do you think 'matching' helped ❑ or hindered ❑ or had little or no effect ❑ on the process?
Why/How?
Helped by putting *party/parties at ease ❑
Helped by giving *party/parties confidence in the process ❑
Helped by ensuring mediator(s) understood the issue ❑
Hindered by encouraging party to assume mediator was 'on side' ❑
Other
reasons.....

1.2 Did lack of 'matching' help ❑ or hinder ❑ or have little or no effect ❑ on the process?
Why/How?.....

2. CULTURE AND THE DISPUTE

	Yes	No
2.1 Was *ethnic/cultural difference expressly a cause of this dispute?	❑	❑
2.2 Did *ethnic/cultural difference contribute to the seriousness of the dispute?	❑	❑
2.3 Was ethnic/cultural difference an unstated issue?	❑	❑
2.4 If the answer was 'yes' to any of the above questions, did mediators need to deal with the issue?	❑	❑

2.5 How was it handled?.....

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3. CULTURE AND PROCESS

	Yes	No
3.1 Did the parties discuss cultural factors between them?	❑	❑
3.2 If so, was this helpful?	❑	❑

3.3 How/Why?
Cleared up misunderstanding ❑
Improved mutual understanding/communication ❑
Other
reasons.....

3.4 Did either party explore cultural factors in caucus?		❑	❑
3.5 If so, was this helpful?		❑	❑

3.6
How/Why?.....

3.7 Do you think cultural background of -	mediators	Party A	Party B
- helped achieve settlement?	❑	❑	❑
- or made settlement difficult?	❑	❑	❑

3.8 How/Why?
- helped establish authority of mediator ❑
- seemed to make party unwilling to be seen to concede/compromise ❑
-other
reasons.....

3.9 Did either party immigrate *recently/long ago? Party A ❑ Party B ❑ neither ❑

	Yes	No
3.10 Did this cause a power imbalance	❑	❑
3.11 Was it a factor encouraging settlement?	❑	❑
3.12 Was it a factor hindering settlement?	❑	❑

3.13 How/Why
-seemed to make *Party A/Party B anxious to settle ❑
-seemed to make *Party A/Party B determined to settle ❑
-Other
reasons.....

3.14 If an interpreter(s) was used, did this help?	❑	❑
or hinder?	❑	❑
3.15 Or did mediator(s) interpret?	❑	❑

3.16 Comment on any special problems/benefits
.....

2. CJC MEDIATION SURVEY

USER'S REPORT FILE NO:.....

Research Co-Ordinator
Community Justice Centres
17 Randle Street
SURRY HILLS NSW 2010 202

AS PART OF A RESEARCH PROJECT UNDERTAKEN FOR THE COMMONWEALTH OFFICE OF MULTICULTURAL AFFAIRS, THE CJC IS ASKING PEOPLE USING THE SERVICE TO COMPLETE THIS SHORT REPORT COMMENTING ON THE MEDIATION. AS EXPLAINED BY THE MEDIATORS, COMPLETION OF THIS REPORT IS VOLUNTARY AND ALL REPORTS WILL BE TREATED AS CONFIDENTIAL.

**PLEASE COMPLETE AND POST THIS REPORT IN THE ENVELOPE PROVIDED.

	(please tick) YES	NO
1. Do you think this mediation session helped you?	❑	❑
- Yes - it helped me understand the other person's side of the problem ❑		
- it cleared up misunderstandings ❑		
- it made the other person listen to me ❑		
- No - it went round and round in circles ❑		
- it upset me more than before ❑		
- it made me see that I should go to court ❑		
Yes/No (other reasons).....		
2. Do you think both mediators understood your side of the dispute?	❑	❑
3. Or did only one mediator seem to understand?	❑	❑
4. Or did neither mediator seem to understand?	❑	❑
5. Do you think any of the following factors caused or contributed to this dispute?		
- speaking a different language	❑	❑
- being of different ages	❑	❑
- coming from a different country	❑	❑
- having different customs/attitudes	❑	❑
- having different religions	❑	❑
- other differences (please specify).....		

6. Add any comments on the mediation session.....
.....

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